PART II
Section 2

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(Continued)

PART 44—ENLISTMENT AND DISCHARGE OF INDIVIDUALS WITH JUVENILE AND YOUTHFUL OFFENDER RECORDS

Sec.
44.1 Purpose.
44.2 Policy.

AUTHORITY: §§ 44.1 and 44.2 issued under R.S. 161, 5 U.S.C. 22.

§ 44.1 Purpose.

The purpose of this part is to establish uniform policies in the enlistment and separation regulations and procedures of the armed services concerning individuals with juvenile and youthful offender records.

§ 44.2 Policy.

(a) Enlistment of applicants with juvenile and youthful offender records.

(1) The fact of adjudication as a youthful offender or juvenile delinquent by a State or disposition by Federal juvenile authorities is not in itself a bar to enlistment if the applicant is otherwise eligible. An applicant is to be judged as to his fitness for the armed services by his character as of the time of his application for enlistment.

(2) During enlistment processing each applicant will be specifically questioned concerning juvenile and youthful offender records; the policies of the services in this regard and the necessity for complete and accurate statements will be thoroughly explained to the applicant; and he will be required to sign a written statement as to whether or not he has any type of record of juvenile delinquency or of being a youthful offender. If he admits such record, or if he does not admit one and the enlisting agency has reason to believe such a record does exist, enlistment action will be held in abeyance pending a complete investigation of the facts in the case. Contact will be made with the civil authorities for information as to the applicant's character and rehabilitation, the actual offenses committed, circumstances in the case, disposition by the courts, actual confinement served and whether any form of civil restraint still exists. The evaluation of the civil court and its probation officers will be an important consideration. Any other information deemed relevant to an evaluation of the case may also be requested. Where civil authorities refuse to furnish information, the enlistment will be held in abeyance and the applicant advised that the burden of obtaining and furnishing the information is upon him.

(3) If civil restraint no longer exists and if the applicant's over-all rehabilitation appears to be satisfactory and if otherwise qualified for service he may be accepted for enlistment. If the applicant's over-all rehabilitation has not been satisfactory or if the investigation discloses him to be morally unacceptable for military service and unfit to associate with members of the military service, he shall be rejected for enlistment. Such rejection will be on the above grounds and not due to the fact that the applicant was adjudged a youthful offender or juvenile delinquent.

(4) Recruiting personnel will be thoroughly trained in and familiar with all aspects of the interrogation procedure.

(b) Disposition of enlistees who denied upon enlistment that they had juvenile and youthful offender records.

(1) Upon discovery subsequent to enlistment that an enlistee denied a juvenile or youthful offender record, action will be taken to ascertain all the facts in the case. Contact will be made with the civil authorities for information as to the actual offenses committed, circumstances in the case, disposition by the juvenile or youthful offender courts, actual confinement served and whether any form of civil restraint still exists. Any other information deemed relevant to an evaluation of the case may also be requested. In addition, the man will be afforded the privilege of making a statement after being advised of his rights under Article 31, MCM, 1951.

(2) In the interest of conservation of manpower, the concealment of such records should not automatically preclude the retention of the individual unless investigation shows the individual morally unsuited for military service and association with other members of the military service.

(3) The facts in the case, the man's statement, the determination of the court and its officers, and the military service rendered by the enlistee since enlistment will be evaluated in order to determine whether subject should be discharged or retained in the service.

(4) If discharge is determined to be

proper, it will be for unsuitability under honorable conditions unless circumstances are such as to warrant a lower type discharge, in which case a discharge by reason of misconduct (fraudulent enlistment) may be effected. If retention in the service is deemed appropriate, subject will be granted a waiver and notation thereof made in his service record.

(5) In the event investigation reveals that civil restraint exists and the man's retention is desired, the civil authorities will be requested to terminate or suspend such restraint for the duration of the enlistment.

PART 48—OPTIONAL RETIREMENT

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AUTHORITY: §§ 48.101 to 48.602 issued under sec. 1444, 70A Stat. 111; 10 U. S. C. 1444. Interpret or apply E. O. 10499, 18 F. R. 7003, 3 CFR, 1953 Supp.

Subpart A—General Information

§ 48.101 Purpose.

The purpose of the Uniformed Services Contingency Option Act of 1953 is to permit each member of the uniformed services to elect to receive a reduced amount of any retired pay which may be awarded him as a result of service in his uniformed service in order to provide one or more of the annuities specified in section 4 of the act, payable after his death in a retired status to his widow, child, or children, subject to certain limitations specified in the act and elaborated in this part.

§ 48.102 Definitions.

(a) The term "uniformed services" means the Army of the United States, Navy, United States Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service, including all components and members thereof.

(b) The term "member" means a commissioned officer, commissioned warrant officer, warrant officer, nurse, flight officer, or a person in an enlisted grade (including an aviation cadet), of any of the uniformed services and a person entitled to retainer pay in the Fleet Reserve or Fleet Marine Corps Reserve with credit for sixteen or more years of naval service.

(c) The term "active member" means a member on the active list of a regular or reserve component of a uniformed service, or a member of a reserve component of a uniformed service who has completed 20 or more years of satisfactory Federal service, as defined in section 302 of the Army & Air Force Vitalization and Retirement Equalization Act of 1948.

(d) The term "retired member" means a member or former member of a uniformed service, who is or has been awarded retired, retirement, or retainer pay or equivalent pay as a result of service in one of the uniformed services.

(e) The term "widow or widower" refers only to the lawful spouse at the date of retirement of an active member or, in the case of a retired member on the effective date of the act, to the lawful spouse on the effective date of the act.

(f) The term "child" means:

(1) A legitimate child under 18 years of age and unmarried.

(2) A stepchild, under 18 years of age and unmarried, who is in fact dependent on the member for support.

(3) A legally adopted child, under 18 years of age and unmarried.

(4) A child, as defined in subparagraphs (1), (2) and (3) of this para-

graph, who is over 18 years of age and unmarried, and who is incapable of self-support because of being mentally defective or physically incapacitated if that condition existed prior to reaching age eighteen.

(5) In all cases, the term "child" refers only to an active member's child, as heretofore defined, who was born and is living and meets the requirements of this paragraph at the date of retirement of the active member, or to a retired member's child who was born and is living and meets the requirements of this paragraph on November 1, 1953.

(g) The term "stepchild" means a child of a spouse by a former marriage. The stepchild relationship will terminate upon the divorce of the parent spouse but not upon the death of the parent spouse.

(h) The term "in fact dependent" means that the stepchild must be dependent on the member for over half of his or her support.

(i) The term "retired pay" includes retirement pay, equivalent pay, and retainer pay.

(j) The term "department concerned" means (1) The Department of the Army with respect to the Army, (2) the Department of the Navy with respect to the Navy and Marine Corps, (3) the Department of the Air Force with respect to the Air Force, (4) the Treasury Department with respect to the Coast Guard, (5) the Department of Commerce with respect to the Coast and Geodetic Survey, and (6) the Department of Health, Education, and Welfare with respect to Public Health Service.

(k) The term "dependents" as used in this part means the prospective annuitants described in paragraphs (e) and (f) of this section.

Subpart B—Election of Options

§ 48.201 Options.

(a) As provided in § 46.203, an active member, former member, or a retired member may elect any one or more of the following annuities in amounts equal to one-half, one-quarter, or one-eighth of the reduced amount of his retired pay. Such amounts must be specified at the time of election.

(1) An annuity payable to or on behalf of his widow, the annuity to terminate upon her death or remarriage, whichever first occurs.

(2) An annuity payable to or on behalf of his surviving child or children, the annuity to terminate when there ceases to be at least one such surviving child, unmarried and under eighteen years of age, except that if there is a child unmarried and over eighteen years of age incapable of self-support because of being mentally defective or physically incapacitated and that condition existed prior to his reaching eighteen years of age, the annuity to terminate upon his marriage, death, or recovery from the disability, whichever first occurs. Each payment under such annuity shall be paid in equal shares to or on behalf of of the surviving children remaining eligible at the time the payment is due.

(3) An annuity payable to or on behalf of his widow and surviving child or children, the annuity to terminate upon: The death or remarriage of the widow; or, if later, the first day of the month in which there is no surviving child of the member who is under eighteen years of age and unmarried, except that if there is a child, unmarried and over eighteen years of age incapable of self-support because of being mentally defective or physically incapacitated and that condition existed prior to his reaching eighteen years of age, the annuity to terminate upon his marriage, death or recovery from the disability, whichever first occurs. Such annuity shall be paid to the widow until death or remarriage, and thereafter each payment under such annuity shall be paid in equal shares to or on behalf of the surviving children remaining eligible at the time the payment is due.

(4) An annuity payable under the same terms and conditions as specified in subparagraphs (1), (2), and (3) of this paragraph, with the additional provision that no further deductions shall be made from the retired pay of the member commencing with the first day of the month following that in which there was no beneficiary who would have been eligible to receive, upon the death of the member, an annuity payable under the election made by him.

§ 48.202 Limitation on number of annuities.

Where an active or retired member desires to provide more than one annuity, he may elect § 48.201(a) (1) and (2), with or without the provisions of subparagraph (4) thereof, but in no case may the combined amounts of the annuities exceed 50 per centum of the amount of his reduced retired pay. It is pointed out that in the case of families in which the dependent widow and dependent child or children are living in separate households the options under § 48.201(a) (1) and (2) might prove more desirable.

§ 48.203 Election of options.

(a) An active member who on November 1, 1953, has completed over 18 years' service which is creditable in the computation of basic pay may elect to receive a reduced amount of any retired pay which may be awarded him as the result of service in his uniformed service in order to provide one or more of the annuities as specified in §§ 48.201 and 48.202 payable after his death in a retired status to or on behalf of his surviving widow, child, or children. To be effective the election by such member on active duty must be signed, witnessed, and delivered to appropriate service officials or postmarked not later than November 1, 1954. For such members not on active duty, the election must be signed and postmarked not later than November 1, 1954, or signed by the member and delivered to appropriate service officials not later than November 1, 1954. The appropriate service official receiving the election will record the date and time of delivery by stamping the election letter or envelope accompanying the election, or by issuing an indorsement or other form of receipt as evidence of the date and time of delivery of such election.

(b) An active member who on November 1, 1953, has not completed over 18 years' service which is creditable in the computation of basic pay may elect to receive a reduced amount of any retired pay which may be awarded him as the result of service in his uniformed service in order to provide one or more of the annuities as specified in §§ 48.201 and 48.202 payable after his death in a retired status to or on behalf of his surviving widow, child, or children. The election by such member on active duty must be signed, witnessed, and delivered to appropriate service officials or postmarked not later than the day preceding the date of completion of 18 years' service or November 1, 1954, whichever is later. For such members not on active duty the election must be signed and postmarked or signed and delivered to appropriate service officials not later than the day preceding the date of completion of 18 years' service or November 1, 1954, whichever is later. In cases of elections not postmarked, the appropriate service official receiving the election will record the date and time of delivery by stamping the election letter or envelope accompanying the election, or by issuing an indorsement or other form of receipt as evidence of the date and time of delivery of such election. A member who fails to make an election prior to the completion of 18 years' service on November 1, 1954, whichever is later, may not thereafter be covered by any provision of the act.

(c) An active member retired for physical disability who is awarded retired pay after November 1, 1953, and prior to the completion of eighteen years service may make an election to receive a reduced amount of any retired pay which may be awarded him by his uniformed service in order to provide one or more of the annuities as specified in §§ 48.201 and 48.202 payable after his death in a retired status to or on behalf of his surviving widow, child, or children. The election of contingency options by such member shall be submitted not later than the time he selects the method of computation of retired pay.

(d) Missing member: An active member who, as a result of or in connection with military or naval operations, is in a status of missing, missing in action, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and because of that status is unable to make the election prior to the completion of the eighteen years of service, or an active member who is in that status on November 1, 1953, and has theretofore completed the eighteen years of service, may make the election. In order to be effective, the election must be made within six months of his return to the jurisdiction of his uniformed service.

(e) A person who is a former member on November 1, 1953, and who is thereafter awarded retired pay by a uniformed service may make such election. In order to be effective, the election must be made at the time he is awarded re-

tired pay. Any former member who is thereafter reenlisted or reappointed is governed by paragraphs (a) and (b) of this section.

(f) A member or former member who was awarded retired pay before November 1, 1953 has until April 30, 1954 to make such election. Notwithstanding any other provision of this section, a member, including those with less than 18 years' service, retired during the period November 1, 1953 and April 30, 1954, shall have until April 30, 1954 to make such election. A member retired during the period May 1, 1954 and November 1, 1954, shall have until November 1, 1954, to make such election.

(g) Incompetent member: Whenever an active member, former member, or retired member is determined to be mentally incompetent by medical officers of the service concerned or of the Veterans' Administration, or is adjudged mentally incompetent by a court of competent jurisdiction, and because of such mental incompetency is incapable of making any election within the time limitations prescribed by the act, the head of the department concerned may make the appropriate election on behalf of such member if so requested by the spouse or if there be no spouse by or on behalf of the child or children of such member. If such member is subsequently determined to be mentally competent by medical officers of the Veterans' Administration, or where appropriate is subsequently adjudged mentally competent by a court of competent jurisdiction, he may within one hundred and eighty (180) days of such determination or judgment, modify, or terminate the election made on his behalf. In such a case, the modification or revocation will be effective the date of the member's request for such modification or revocation. Deductions theretofore made shall not be refunded.

(h) Any election made and not cancelled prior to November 1, 1953, will be considered as having been made on November 1, 1953.

(i) A member who declines or fails to make an election within the time limits specified in this section may not thereafter be covered by any provision of the act. A member who has declined to select any option may thereafter elect the option or options provided each election is made within the time prescribed in this section.

§ 48.204 Modification or revocation of election.

(a) A modification of election is a change in the percentage of the reduced amount of retired pay under any option or a change in any option or options selected. A revocation is a cancellation of a previous election and constitutes a withdrawal from coverage under the act.

(b) An active member may modify the terms of his election as often as he may desire prior to his retirement. Such modification shall become effective five years after the date of execution unless the member is retired in the interim period. If the member is retired prior to a date five years from the date of modification the terms of the original election as modified over five years prior to the date of retirement will be effective.

(c) Any active member may revoke an election at any time but he shall not thereafter be permitted to withdraw or modify his revocation and after it becomes effective he shall not be permitted to be covered in any way by this act. If the member retires within five years after a revocation, such revocation shall have no effect.

(d) A retired member may not modify or revoke his election.

(e) In cases where an election has been made by the head of the department concerned on behalf of an incompetent member and the member is subsequently adjudged competent and desires to modify or revoke the election, such modification or revocation is effective the date of the request notwithstanding paragraphs (a) and (b) of this section, provided such modification or revocation is made within one-hundred and eighty days following determination that member is competent.

(f) Notification of a change of dependent is not a modification of election.

§ 48.205 Requirement for statement from member who does not desire coverage.

It is desirable that all members make a positive statement of desire to be covered by the act or not to be covered. For active duty members this may consist of return of the form stating that no election is desired, or a statement forwarded by the Commanding Office during the individual's 18th year of service for basic pay purposes or at the completion of the six months period as the case may be, stating that the benefits of the act have been explained to the individual concerned. For retired members and inactive reserve members a return of a post card acknowledging receipt of a letter of information will suffice. A member who has declined to select any option may thereafter elect an option or options provided such election is made within the time prescribed under the act.

§ 48.206 Election form.

The form for making elections will be submitted as indicated by the department concerned. All copies forwarded will be signed and any signed copy may be used to substantiate the fact of election.

§ 48.207 Information regarding elections.

(a) All retired members and members of the reserve components on inactive duty who have completed seventeen years service for basic pay purposes will be provided an individual letter of instructions and an option election form.

(b) It is the responsibility of the command or unit to which the member is assigned to promulgate information concerning the benefits of the act to all members on active duty. Such commands or units will also provide election forms to the members assigned.

(c) Former members and active members retired for physical disability prior to the completion of eighteen years service will be provided the forms for submission at the time of retirement.

Subpart C—Designation of Dependents

§ 48.301 Designation.

(a) An active member without dependents may make an election. If a member has dependents they should be named at the time of election or when they are acquired. The named dependents within an elected option may be changed until the date of retirement provided such changes are limited to the same option. In any case such spouse and all children must be named at the date of retirement.

(b) It is emphasized that if a member without dependents does not make an election at the appropriate time, he may not thereafter be covered by the act regardless of whether he subsequently acquires dependents.

(c) On the date of retirement the names of eligible dependents under the elected option(s) and the date of birth of each will be indicated to the agency responsible for paying retired pay and to the member concerned. If the widow, child, or children therein named are not eligible dependents under the elected option(s), it is the responsibility of the member concerned to establish eligible dependents under the elected option(s).

§ 48.302 Substantiating evidence regarding dependency and age of dependents.

At the time of submitting election or at the time of retirement as the case may be, the member must indicate the date and place of his marriage, the full name of his wife, prior to their marriage, and if requested by the Department concerned submit proof of dissolution of prior marriages, if any, of either spouse. The age of the dependent will be indicated by date of birth and must be substantiated by a birth certificate or other corroborative evidence. The birthdate of the member must be shown for verification with information in the service record.

§ 48.303 Condition affecting entitlement of widow or widower.

A member may have a different lawful spouse at time of retirement than the lawful spouse he had at the time of election. Consequently, once an election is made for a widow, the eligible widow will be the spouse to whom the member was lawfully married at the time of retirement.

Subpart D—Reduction of Retired Pay

§ 48.401 Computation of reduction.

(a) The reduction to be made in the retired pay of an active or retired member who has made an election shall be computed by the uniformed service concerned in each individual case based upon tables showing percentage reduction in retired pay. These tables [1] show-

[1] These tables have been filed with Federal Register Division as part of the original document. Copies are available for reference through administrative channels of each of the uniformed services.

ing the percentage reduction of retired pay are set forth in Appendix I. The computation of reduction shall be made based upon the tables in effect on the date of retirement in the case of an active member and the date of election in the case of a retired member.

(b) If the active member has no dependents on the effective date of retirement no reduction in retired pay shall be made.

(c) An adjustment may be made in the reduction of retired pay upon the finding of an administrative error or a mistake of fact.

§ 48.402 Effective date of deduction.

(a) The effective date of deduction in retired pay will be the effective date of retirement in the case of an active member and the first day of the month in which election is effective in the case of a retired member. The deduction in retired pay will be terminated on the effective date of termination of retired pay of the member.

(b) In the event the member has elected the option under § 48.201(a)(4), the reduction in retired pay shall be terminated the first day of the month following that in which there was no dependent who would have been eligible to receive, upon the death of the member, an annuity payable under the election made by him.

§ 48.403 Payment of non-withheld reduction of retired pay.

(a) A retired member of a uniformed service who has made an election shall, during any period including periods on active duty in which he is not receiving retired pay, deposit the amount which would have been withheld from his retired pay had he been receiving that pay.

(b) Such deposit will be payable to the Treasurer of the United States and shall be forwarded monthly to the agency which would normally pay the member concerned retired pay.

(c) The aforementioned agency will in all cases inform the members concerned of the amount to be deposited and when such deposits are to be made.

(d) The aforementioned agency will, after 30 days have elapsed since due date of a deposit, inform the member concerned that he is delinquent from such due date and thereafter his widow, child, or children will not be eligible for the annuity provided under the act until the arrears have been paid. The notification of delinquency will advise the member that 15 additional days have been granted to him in which to remit his deposit, and that if the amount required to be deposited is not remitted within that period the member will be charged interest to include the first day of delinquency. In no case will the expiration date of the 15 days exceed a date later than 45 days from the date the deposit was due. The interest will be compounded annually and the rate will be that in effect at the time the reduction in retired pay commenced or should have commenced. If such member becomes in receipt of retired pay, any arrears with compound interest will be withheld from the retired pay.

§ 48.404 Age to be used.

Ages to be used for calculating reduction of retired pay will be the ages of the member and his named dependents on their nearest birthday as of the date of retirement in the case of an active member and as of the date of election in the case of a retired member.

§ 48.405 Refund of reduction.

(a) Any member or former member on the temporary disability retired list established pursuant to Title IV of the Career Compensation Act of 1949, Public Law 351, 81st Congress, who has elected to receive reduced retired pay in order to provide one or more of the annuities specified in the act, and who is subsequently removed from the list due to any reason other than permanent retirement shall have refunded to him a sum which represents the difference between the amount by which his retired pay has been reduced and the cost of an amount of term insurance which is equal to the protection provided his dependents during the period he was on the temporary disability retired list.

(b) If the member concerned is returned to active duty, he may continue the election as previously made or he may modify or revoke the election as provided in § 48.204.

Subpart E—Annuity

§ 48.501 General information.

No annuity payable under the act shall be assignable, either in law or equity, or be subject to execution, levy, or attachment, garnishment, or other legal process. Annuities payable under this act shall be in addition to any pensions or other payments to which the beneficiaries may now or hereafter be entitled under other provisions of law and shall not be considered income under any law administered by the Veterans Administration.

§ 48.502 Effective date of annuity.

All annuities payable under this act shall accrue from the first day of the month in which the retired member dies and shall be due and payable not later than the fifteenth day of each month following that month and in equal monthly installments thereafter, except that no annuity shall accrue or be paid for the month in which entitlement to that annuity terminates.

§ 48.503 Claims for annuity payments.

Upon official notification of death of a retired member who has elected to receive reduced retired pay, the Department concerned shall forward to the eligible surviving dependents necessary information and forms for making application for annuity payments; such information shall include the place to which the application should be forwarded and to which questions regarding annuity payments should be addressed.

§ 48.504 Payment to children.

Annuities for child or children will be paid to the child or guardian, or will be payable on behalf of the child to the person who has care, custody, and control of the child.

§ 48.505 Establishing eligibility of annuitants.

Eligibility for the annuity will be established by such supporting evidence as may be required by the Department concerned.

§ 48.506 Determination that designated annuitant is ineligible.

(a) The Head of the Department concerned is empowered to use any means provided by law to recover amounts of annuities erroneously paid to any individual under this act. The Head of the Department concerned may authorize such recovery by adjustments in subsequent payments to which the individual is entitled.

(b) There need be no recovery as provided in paragraph (a) of this section when, in the judgment of the Head of the Department concerned, and the Comptroller General of the United States, the individual to whom the erroneous payment has been made is without fault and recovery would be contrary to the purpose of the act or would be against equity and good conscience.

§ 48.507 Reconsideration of determination of eligibility for the benefits of the act.

Determinations regarding eligibility to the benefits of the act may be reconsidered by the Head of the Department concerned or his designee upon application of the applicant.

Subpart F—Miscellaneous

§ 48.601 Annual report.

A report will be prepared annually by the Department concerned. Such report will be submitted to the Joint Committee for the preparation of the consolidated report required of the Secretary of Defense. The information required is shown in Appendix II. The format will be as directed by the Board of Actuaries.

§ 48.602 Organization.

(a) A joint committee composed of representatives of the Departments concerned will meet annually or as often as required prior to the time of meeting of the Board of Actuaries.

(b) The duties of the committee will include but not be limited to the following:

(1) Prepare the joint report required in § 46.601

(2) Make recommendations for changes to this part.

(3) Make recommendations for legislative changes in the act.

(4) Make recommendations to insure uniform operating policies insofar as practicable.

(5) As directed by the Board of Actuaries prepare tables of percentage reduction of retired pay.

(6) As directed by the Board of Actuaries determine a cost of term insurance as required in § 48.405 which will be used by all Departments.

(c) The position of Chairman of the joint committee will be rotated annually

on a fiscal year basis between the Military Departments.

(d) The coordinating and executive agency of the Committee shall be the Department which the Chairman is representing.

APPENDIX I—UNIFORM TABLES OF ACTUARIAL EQUIVALENTS [1]

APPENDIX II—FOR EACH INDIVIDUAL PARTICIPANT THE FOLLOWING DATA WILL BE REQUIRED FROM THE UNIFORMED SERVICES BY THE BOARD OF ACTUARIES FOR THE ANNUAL REPORT

I. *Elections made by persons not yet retired.* Information requested herein concerning elections made by persons not yet retired shall come from transaction records showing the elections and modifications made over the last year (or since the last report). It is not necessary for the purposes of this annual report that current records be maintained showing the effective elections or modifications in force for all members who have made elections in prior years.

(a) *Original elections.*

(1) Status of member (active or inactive).

(2) Sex of member.

(3) Completed years service (for pay purposes) at time of election.

(4) Month and year of election.

(5) Option elected: a, a-d, b, b-d, c-d.

(6) Amount of survivor annuity elected: ½, ¼, ⅛.

(b) *Modifications of previous elections.*

(1) Status of member (active or inactive).

(2) Sex of member.

(3) Completed years service at time of election.

(4) Month and year of this modification.

(5) Last previous election made: a, a-d, b, b-d, c, c-d.

(6) Amount of survivor annuity of last previous election: ½, ¼, ⅛.

(7) Option elected under this modification: a, a-d, b, b-d, c, c-d.

(8) Amount of survivor annuity elected under this modification: ½, ¼, ⅛.

II. *Members drawing or entitled to draw reduced retired pay.*

(1) Sex of member.

(2) Option in effect: a, a-d, b, b-d, c, c-d.

(3) Amount of option: ½, ¼, ⅛.

(4) Applicable table:

Disability.

Non-disability prior to May 1, 1954.

Non-disability after May 1, 1954.

(5) Age of member at election or retirement whichever is later.

(6) Age of spouse at election or retirement whichever is later.

(7) Age of youngest child at election or retirement whichever is later, if applicable.

(8) Full monthly retired pay—before any deductions.[2]

(9) Reduced monthly retired pay—full pay less cost of option only.[1]

(10) Amount of monthly benefit payable to survivors.[2]

(11) Month and year of retirement or of election if later.

(12) Years of service completed at retirement.

(13) Sex of youngest child, if applicable.

(14) Total number of eligible children, if applicable.

Termination data:

(15) Month and year reduced retired pay terminated.

(16) Cause of termination:

Death of member.

No eligible beneficiary where Option 4 has been elected.

Removal of member from temporary disability list without being entered on permanent disability list.

(17) Type of beneficiaries:

Widow only.

Child or children only.

Both spouse and child or children.

(18) Number of eligible children, if applicable.

(19) Identification Code for the election of multiple options.

Where a combination of options has been elected (such as a and b; or a–d and b–d) two cards will be maintained, one for each survivor annuity and each carrying the appropriate proportion of the retired member's pay. In these cases each of the two cards will carry an "identification code" of "05" showing that the card was in reality "half" of the retired member. All elections other than these combination elections (a and b, a–d and b, a and b–d, a–d and b–d) shall be coded "10" to indicate that the card is in reality a "whole" retired member.

III. *Beneficiaries receiving survivor annuities.*

(1) Option under which claim arose: a, a–d, b, b–d, c, c–d.

(2) Amount of survivor annuity under which claim arose: ½, ¼, ⅛.

(3) Month and year survivor benefits began.

(4) Age of spouse when survivor benefits began (if applicable).

(5) Age of youngest child when survivor benefits began (if applicable).

(6) Sex of spouse.

(7) Sex of youngest child.

(8) Number of eligible children when survivor benefits began.

(9) Monthly amount of survivor benefit payable.

Termination data:

(10) Month and year of termination.

(11) Cause of termination:

Death of spouse.

Remarriage of spouse.

Death of child under 18.

Marriage of child under 18.

Attainment of age 18.

(12) Age of last beneficiary, if a child.

IV. A special file should be maintained for cases where the survivor benefit is payable solely because of there being a child beyond age 18 who is mentally incapacitated or physically disabled. Such file should merely identify these cases so that desired information may be obtained by reference to the supporting records.

[1] Filed as part of the original document.

[2] Where options a and b have been elected separate cards are maintained for each option. Each card shall carry the proper proportion (as determined according to instructions for using the tables) of gross retired, reduced retired pay, and benefit payable to survivors.

PART 50—FULFILLING THE MILITARY SERVICE OBLIGATION

Sec.
50.1 Purpose.
50.2 Cancellation.
50.3 Applicability.
50.4 The military service obligation.

AUTHORITY: §§ 50.1 to 50.4 issued under secs. 4, 6, 62 Stat. 605, as amended, 609, as amended, sec. 651, 70A Stat. 27, as amended, sec. 516, 72 Stat. 1439; 50 U.S.C. App. 454, 456, 10 U.S.C. 651, 516. Interpret or apply sec. 262, 69 Stat. 600, as amended, secs. 1, 2, 70 Stat. 333; 50 U.S.C. 1013, 1411, 1412.

§ 50.1 Purpose.

The purpose of this part is to prescribe uniform policy with respect to fulfilling the statutory military service obligation.

§ 50.2 Cancellation.

DoD Directive 1200.3, "Reserve Obligations Under section 4(d), Universal Military Training and Service Act, as amended," dated March 2, 1953, and DoD Directive 1300.4, "Discharge of Reservists for the Purpose of Immediate Entry into the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy, or the U.S. Coast Guard Academy, to Prevent Such Individuals from Having Dual Military Status While Enrolled Therein," dated May 3, 1954, are hereby superseded and cancelled.

§ 50.3 Applicability.

This part applies to all military departments in the administration of the regular and reserve components.

§ 50.4 The military service obligation.

(a) *Subsections 4(d) (1) and (2) of the Universal Military Training and Service Act, as amended, hereinafter referred to as the UMT&S Act, as amended.* Members of the Armed Forces, including the reserve components thereof, who possess a statutory reserve obligation as a result of the operation of subsections 4 (d) (1) and (2) of this act are relieved of that obligation by being discharged from military status at the discretion of the Secretary concerned.

(b) *Subsection 4 (d) (3) of the UMT&S Act, as amended*—(1) *Statutory provisions*—(i) *The eight year obligation.* "Each person who * * * [between June 20, 1951 and August 9, 1955, inclusive] * * * is inducted, enlisted, or appointed, under any provision of law, in the Armed Forces, including the reserve components thereof * * * prior to attaining the twenty-sixth anniversary of his birth, shall be required to serve on active training and service in the Armed Forces * * * and in a reserve component, for a total period of eight years, unless sooner discharged on the grounds of personal hardship, in accordance with regulations and standards prescribed by the Secretary of Defense * * *. Each such person, on release from active training and service in the Armed Forces * * * shall * * * be transferred to a reserve component of the Armed Forces, and shall serve therein for the remainder of the period which he is required to serve * * *."

(ii) *The six year obligation.* "Each person who, subsequent to * * * [August 9, 1955] * * * is inducted, enlisted, or appointed, under any provision of law, in the Armed Forces, including the reserve components thereof, except a person enlisting pursuant to the provisions of section 262 of the Armed Forces Reserve Act of 1952, or a person deferred under the next to the last sentence of section 6 (d) (1) of this act, as amended, prior to attaining the twenty-sixth anniversary of his birth, shall be required to serve on active training and service in the Armed Forces and in a reserve component, for a total period of six years, unless sooner discharged on the grounds of personal hardship, in accordance with regulations and standards prescribed by the Secretary of Defense * * *. Each such person on release from active training and service in the Armed Forces * * * shall * * * be transferred to a reserve component of the Armed Forces, and shall serve therein for the remainder of the period which he is required to serve * * *."

(2) *Implementation.* (i) For the purpose of administering subsection 4 (d) (3) of the UMT&S Act, as amended:

(*a*) The terms "inducted," "enlisted," and "appointed" refer to initial entry into any of the Armed Forces, including a reserve component thereof.

(*b*) Except as provided in (*d*) of this subparagraph, its provisions apply to male persons who were inducted, enlisted, or appointed as described in (*a*) of this subparagraph, prior to attaining the 26th anniversary of their birth.

(*c*) Its provisions do not apply to persons who had previously acquired a military service obligation under any other provision of law.

(*d*) The six-year requirement set forth in subparagraph (1) (ii) of this paragraph, does not apply to individuals who enlist in the Reserve under the provisions of section 262 of the Armed Forces Reserve Act of 1952, as amended hereinafter referred to as AFRA, as amended, which requires performance of an initial period of three to six months of active duty for training or to graduates of ROTC or other officers' training programs who perfom six months of active duty for training as authorized by subsection 6 (d) (1) of the UMT&S Act, as amended. Such individuals incur an eight-year military service obligation.

(ii) Subject to the considerations set forth in subdivision (i) of this subparagraph, qualified individuals affected by the provisions of subsection 4 (d) (3) of the UMT&S Act, as amended are required to serve a total period of eight or six years, as the case may be, from the date of their induction, enlistment, or appointment. For personnel accounting purposes, they shall not be considered as Reservists until transferred to a reserve component, unless originally entering on their obligated period of service in that status. Transfer to a reserve component of the Armed Force concerned of persons who have a portion of their obligation remaining upon release from active training and service, and who are determined by the appropriate Secretary to be physically and mentally qualified for enlistment or appointment therein, shall be accomplished without discharge from military status.

(3) *Fulfillment of the military service obligation.* (i) Upon completion of the military service obligation, the individual shall be discharged or otherwise separated unless his enlistment or obligated period of service is extended under any provision of law.

(ii) The military service obligation acquired under provisions of subsection 4 (d) (3) of the UMT&S Act, as amended is considered terminated upon a discharge for the purpose of complete separation from military status, or upon revocation or termination of commission or appointment, acceptance of resignation, dropping from the rolls or dismissal.

(iii) An individual subject to the provisions of subsection 4 (d) (3) of the UMT&S Act, as amended may upon his written application be discharged from the Reserve, irrespective of having performed the total required period of service, for the purpose of taking final vows in a religious order. Such application should be accompanied by a statement or certificate signed by the appropriate official of the religious order showing that to proceed further with his acceptance into the order it is necessary that he be separated from military status.

(iv) The military service obligation acquired under provisions of subsection 4 (d) (3) of the UMT&S Act, as amended is not considered terminated upon discharge or other type of separation for the purpose of immediate entry or reentry in the same or any other component of the Armed Forces in the same or any other status or for the purpose of entry into an officers' training program in which the individual has military status. Additional service performed after such discharge or other type of separation will be counted toward fulfillment of such obligation.

(v) An enlisted member of the Armed Forces who accepts appointment as a cadet or midshipman at a service academy or as a midshipman in the United States Naval Reserve shall not be separated from his enlisted status by reason of such appointment, and the period of time served as cadet or midshipman at a service academy or as a midshipman, United States Naval Reserve shall be counted toward fulfillment of his military service obligation under subsection 4 (d) (3) of the UMT&S Act, as amended.

(vi) A service academy cadet or midshipman, or a midshipman, United States Naval Reserve, who initially entered the Armed Forces in such status shall be transferred, in order to complete his military service obligation under subsection 4 (d) (3) of the UMT&S Act, as amended, to a reserve component in a grade deemed appropriate by the Secretary concerned in the event the appointment of such cadet or midshipman is terminated prior to graduation.

(vii) A person whose enlistment or appointment is terminated as being void on the grounds of minority shall not, as a result of such enlistment or appointment, be considered to have acquired

the military service obligation described in subsection 4 (d) (3) of the UMT&S Act, as amended, nor is service under any enlistment or appointment which was so terminated creditable toward the fulfillment of any subsequently acquired obligation.

(viii) The discharge or other separation of a person from an Armed Force prior to the date he has completed his military service obligation under subsection 4 (d) (3) of the UMT&S Act, as amended, will be effected by the appropriate Secretary in accordance with standards prescribed by the Secretary of Defense. A member of the Armed Forces normally shall not be discharged by reason of personal or community hardship prior to the date he has completed his military service obligation; the provisions of Part 125 of this subchapter shall apply in such cases.

(ix) Interservice transfers of Reservists who are subject to the provisions of subsection 4 (d) (3) of the UMT&S Act, as amended, shall be accomplished as prescribed in DoD Directive 1205.5 "Transfer of Persons between Reserve Components of the Armed Forces under Section 209, Armed Forces Reserve Act of 1952".

(x) Apart from any military service obligation that an individual may possess under subsection 4 (d) (3) of the UMT&S Act, as amended, certain persons are entitled to deferment or exemption from induction. Liability for induction terminates upon attainment of age 26 except when, by reason of deferment, liability for induction has been extended to age 28 or, in other instances, to age 35.

(*a*) *Subsection 4 (c) (2) of the UMT &S Act, as amended.* A person who was an enlisted member of a reserve component on June 25, 1950 and whose application for two years of active duty has been denied is deferred so long as he serves satisfactorily in such reserve component in accordance with provisions of Part 45 of this subchapter.

(*b*) *Subsection 6 (c) (1) of the UMT &S Act, as amended.* A person who was a member of an organized unit of a reserve component on February 1, 1951 is exempt so long as he participates satisfactorily in accordance with provisions of Part 45 of this subchapter.

(*c*) *Subsection 6 (c) (2) (A) of the UMT&S Act, as amended.* An individual who enlists prior to age 18½ in an organized unit of the Army National Guard or Air National Guard is deferred so long as he serves satisfactorily as a member of such organized unit.

(*d*) *Subsection 6 (c) (2) (C) of the UMT&S Act, as amended.* An individual who enlists prior to age 18½ in an organized unit of the Reserve is deferred so long as he serves satisfactorily as a member of such organized unit in accordance with provisions of Part 45 of this subchapter.

(*e*) *Subsection 6 (d) (1) of the UMT &S Act, as amended.* A graduate of ROTC or related officers' training program who has not performed active military service is deferred from induction so long as he continues in Regular or Reserve status pursuant to the terms of his enrollment contract.

(*f*) *Subsection 6 (d) (2) of the UMT &S Act, as amended.* A member of the Reserve commissioned upon graduation from officers' candidate school and not ordered to active duty in commissioned status is deferred so long as he performs satisfactory service in accordance with provisions of Part 45 of this subchapter.

(*g*) *Section 262 of AFRA, as amended.* A person who enlists in the Ready Reserve for eight years and undergoes three to six months of initial active duty for training is deferred so long as he serves satisfactorily in accordance with provisions of Part 45 of this subchapter.

(*h*) *Subparagraph 2 (b), Executive Order No. 10714 (22 F. R. 4273).* An individual without prior military service who enlisted in a reserve component and who is deferred under the provisions of subparagraph 2 (b), Executive Order No. 10714, dated June 13, 1957 incurred a six or eight year military service obligation as indicated in subparagraph (1) of this paragraph.

(xi) An individual who is enlisted or appointed in the Ready Reserve of any of the Armed Forces pursuant to the provisions of section 262 of AFRA, as amended or subsection 6 (c) of the UMT&S Act, as amended and who subsequently fails to participate satisfactorily in Reserve training will not be discharged by reason thereof. The provisions of Part 45 of this subchapter will apply in such cases. An individual who is inducted under the provisions of subsection 6 (c) (2) (E) of the UMT&S Act, as amended and who completes the required period of active training and service, continues, despite his induction, to hold his appointment or enlistment contract to serve as a Reserve, and shall be required to fulfill the term thereof unless discharged therefrom by the Secretary concerned.

This part is effective immediately. Copies of Service Directives implementing its provisions will be furnished the Assistant Secretary of Defense (Manpower, Personnel and Reserve), within 90 days.

PART 53—OCCASIONS UPON WHICH THE UNIFORM OF ANY OF THE ARMED FORCES MAY BE WORN BY PERSONS HONORABLY DISCHARGED THEREFROM

Sec.
53.1 Purpose.
53.2 Policy.

AUTHORITY: §§ 53.1 and 53.2 issued under sec. 772, 70A Stat. 35; 10 U.S.C. 772.

§ 53.1 Purpose.

The purpose of this part is to prescribe the occasions upon which the uniform of any of the Armed Forces may be worn by persons honorably discharged therefrom.

§ 53.2 Policy.

(a) *Eligibility.* Any person who has served honorably in the Army, Navy, Air Force, or Marine Corps, of the United States during war, and whose most recent service was terminated under honorable conditions, shall, although not in the active military service of the United States, be entitled to wear the uniform of the highest grade held during his or her war service upon the following occasions of ceremony:

(1) Military funerals, memorial services, and inaugurals.

(2) Patriotic parades on national holidays; or other military parades or ceremonies in which any active or reserve United States military unit is taking part.

Nothing in the foregoing shall prevent the wearing of uniforms when otherwise authorized by law.

(b) *Persons awarded the Medal of Honor.* Persons awarded the Medal of Honor are authorized to wear the uniform at any time except as prohibited below.

(c) *Occasions upon which prohibited.* Wearing of the uniform is prohibited:

(1) At any meeting or demonstration which is a function of, or sponsored by, any organization, association, movement, group, or combination of persons which the Attorney General of the United States has designated as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

(2) In connection with non-military activities of a business or commercial nature.

(3) Under any circumstances which would tend to bring discredit or reproach upon the uniform.

(d) *Travel.* Authority to wear the uniform includes periods while traveling to and from the ceremony, provided such travel in uniform is performed within 24 hours of the time of the ceremony. When the uniform is worn under the provisions of this instruction by honorably discharged personnel who served during World War II, the Honorable Discharge Emblem shall be worn.

PART 55—PHYSICAL EXAMINATIONS AND ANNUAL CERTIFICATES OF PHYSICAL CONDITION

SEC.
55.1 Purpose.
55.2 Applicability.
55.3 Policy.

AUTHORITY: §§ 55.1 to 55.3 issued under section 1004(a), Title 10, U.S. Code.

§ 55.1 Purpose.

To establish a uniform policy relating to physical examinations and certificates of physical condition for reservists (other than retired reservists) when not on active duty.

§ 55.2 Applicability.

This part applies to all Military Departments in the administration of members of reserve components.

§ 55.3 Policy.

(a) Each member of the Ready Reserve who is not on active duty shall be examined as to his physical fitness at least once every four years, or more often as the Secretary concerned considers necessary, and shall execute and submit annually a certificate of physical condition.

(b) Each member of the Standby Reserve in an active status, or on an inactive status list, shall execute and submit annually a certificate of physical condition.

(c) Members of the Standby Reserve may be examined as to their physical condition if the Secretary concerned considers such action necessary.

(d) Physical examinations will be reported on Standard Form 88, "Report of Physical Examination" and Standard Form 89, "Report of Medical History." To accomplish physical examinations, the Military Departments are authorized to use jointly all available medical facilities and to award points creditable toward retirement to medical reservists not on active duty for administering physical examinations or to use civilian physicians on a reimbursable basis where governmental medical facilities are not available.

(e) The following action may be taken in regard to those reservists failing to submit such information as may be requested by the appropriate Secretary after every reasonable effort has been made to obtain such information:

(1) Reservists having obligation under the Universal Military Training and Service Act, as amended, may be ordered to active duty or active duty for training, as deemed appropriate under the provisions of section 672(b), Title 10, U.S. Code, for the purpose of securing the necessary information.

(2) All other reservists may be considered for discharge pursuant to section 1162(a) of Title 10, U.S. Code.

PART 56—INTER-SERVICE TRANSFER OF OFFICERS (REGULAR)

Sec.
56.1 Purpose.
56.2 Applicability.
56.3 Policy.
56.4 Procedure.

AUTHORITY: §§ 56.1 to 56.4 issued under sec. 716, Title 10, United States Code.

§ 56.1 Purpose.

The purpose of this part is to establish the policies which will govern implementation of section 716, Title 10, United States Code, with respect to the transfer of commissioned officers between the Regular components of the Army, Navy, Air Force and Marine Corps.

§ 56.2 Applicability.

(a) This part is applicable to officers holding Regular commissions in the armed services, except officers of the medical services. The inter-service transfer of officers holding commissions in the medical services will continue to be accomplished under existing regulations (DoD Instruction 1205.1, "Implementation of the Universal Military Training and Service Act with Respect to Medical, Dental, and Allied Specialist Registrants", Section XI).

(b) Policy and procedure for the transfer of Reserve officers on extended active duty is contained in DOD Directive 1300.5, Part 120 of this subchapter.

(c) Transfer of officers of the Reserve components not on active duty (except officers of the medical services) will continue to be accomplished under applicable Service regulations for conditional resignation and appointment.

(d) No officer of a Reserve component will be transferred to a Regular component under this authority.

§ 56.3 Policy.

(a) It is the policy of the Department of Defense that an officer of any military service who is especially qualified to contribute to the success of an activity of another service will be given an opportunity to do so without interruption of his service career, by being transferred from one service and appointed in another.

(b) No officer will be so transferred without his consent, nor will an officer transferred from one service be appointed in another service with a higher rank or precedence than that he held on the date prior to his transfer.

(c) Transfers will be made only within authorized strength limitations.

(d) While intended for use primarily in the technical fields to permit the full utilization of specialists, this authority to transfer between services is not restricted to technical specialists.

§ 56.4 Procedure.

(a) Request for transfer will normally be initiated by an appropriate agency of the military department desiring the services of an officer serving in another department, or by the officer himself.

(1) (i) If initiated by the officer himself, the request will be forwarded through military channels to the Secretary of the military department in which he is presently commissioned, and will be accompanied by a justification of the requested transfer as being in the interest of national defense and the individual officer.

(ii) The Secretary of the losing Department will forward the request to the Secretary of Defense through the Secretary of the gaining Department. Both Departmental Secretaries will indicate their concurrence or non-concurrence in the requested transfer.

(2) If initiated by other than the officer himself, request for transfer will be routed to the Secretary of Defense through the Secretaries of the gaining and losing Departments and will be accompanied by a statement that the officer concerned consents to the proposed transfer.

(b) The Secretary of Defense will recommend to the President such requested transfers as he considers in the best interests of the Department of Defense.

(c) Termination of presently held commissions and reappointment in another service will be accomplished by the two Services affected without interruption of the continuity of the officer's total military service.

(d) An officer transferred under provisions of this part will be placed on the applicable promotion list or lineal list of the armed force to which he is transferred in an appropriate position as determined by the amount of promotion-list service with which he was credited in his parent service on the day prior to his transfer. His permanent grade and date of rank will be determined by applying that amount of promotion-list service to the appointment laws in effect for the service to which he is being transferred. His temporary grade and date of rank will remain the same as that he held in his parent service on the day prior to his transfer.

(e) An officer transferred under provisions of this part will be credited with the unused leave with which he was credited at the time of transfer, and with the total military service with which he was credited on the date prior to his transfer.

PART 60—EARLY RELEASE OF MILITARY ENLISTED PERSONNEL FOR COLLEGE ENROLLMENT [ADDED]

Sec.
60.1 Purpose.
60.2 Policy.
60.3 Release criteria.
60.4 Exceptions.
60.5 Applicability.
60.6 Action required.

AUTHORITY: §§ 60.1 to 60.6 issued under R.S. 161, sec. 202, 61 Stat. 500, as amended; 5 U.S.C. 22, 171a.

§ 60.1 Purpose.

The purpose of this part is to establish a uniform policy among the Services with respect to discharge or release of enlisted personnel from active service prior to expiration of service period for the purpose of entering or returning to a college, university, or equivalent educational institution.

§ 60.2 Policy.

(a) In the interest of contributing to a high educational level in the United States, it is the policy of the Department of Defense that the maximum assistance practicable will be given to enlisted personnel who are qualified and demonstrate a desire to further their education. Personnel who would be unduly penalized in the pursuit of their education if required to remain in service until expiration of their term of enlistment or induction may be released early subject to meeting all of the requirements shown in §§ 60.3 and 60.6. Separation will be for the convenience of the Government.

(b) The effective date of release from service under this policy will not be earlier than ten days prior to the date of registration prescribed by the educational institution.

(c) Aliens seeking to qualify for citizenship by completion of three years active military service will be excluded from release under this policy prior to performance of such qualifying service.

§ 60.3 Release criteria.

(a) Latest acceptable registration date of school must fall within the last three months of remaining service. In general, personnel who will have a reserve obligation upon separation will not be released under this program until they have completed a minimum of 21 months' active duty on their current term of service.

(b) The individual's services must not be essential to the mission of his assigned organization.

(c) Applicants must furnish documentary evidence that they have been accepted for enrollment without qualification commencing with a specific school term in a recognized institution of higher education in a full-time course of instruction leading to a baccalaureate or higher degree. A "recognized institution" is one listed in Part III of the Educational Directory published by the United States Department of Health, Education, and Welfare whose credits are accepted by accredited institutions.

(d) An applicant must demonstrate his ability and willingness to make the required payment of an entrance fee if he has not already done so.

(e) It must be established clearly by applicant that the specific school term for which he seeks release is academically the most opportune time for him to begin or resume his education and that delay of enrollment until normal expiration of service would cause undue handicap.

§ 60.4 Exceptions.

On an individual basis the Secretaries of the Departments may authorize the release of persons not fully meeting the criteria as exceptions to policy (e.g., personnel who desire to enter and are accepted by theological schools not listed in Part III of the Educational Directory).

§ 60.5 Applicability.

This policy is applicable to all enlisted personnel world-wide, other than reservists ordered to 6 months' active duty for training.

§ 60.6 Action required.

(a) Each military department will establish procedures to guard against abuse of this policy by personnel seeking to utilize it as a means of evading completion of their full term of military service.

(b) Requests for early release from applicants who meet established criteria will be approved unless cogent military circumstances prevent.

PART 63—RECRUITING POLICY FOR SECONDARY SCHOOLS

Sec.
63.1 Purpose.
63.2 Policy.

AUTHORITY: §§ 63.1 and 63.2 issued under R.S. 161, sec. 202, 61 Stat. 500, as amended; 5 U.S.C. 22, 171a.

§ 63.1 Purpose.

The purpose of this part is to provide the Military Departments with policy guidance for both active and reserve recruiting elements in dealing with secondary school authorities.

§ 63.2 Policy.

(a) Students in secondary schools will be encouraged by recruiters to stay in school and graduate.

(b) Students enrolled in secondary schools will not be accepted for active duty enlistment without prior notice to the school and without parents' consent.

(c) When desired by local school authorities, joint arrangements with school authorities for in-school student time will be made by one representative selected by the military recruiting elements of the Military Departments in each community.

(d) Secondary schools are to be encouraged and given every assistance in teaching the vocational-career opportunities of the Armed Forces at the same time other occupational opportunities are taught in schools.

(e) All contacts with school authorities soliciting their cooperation on military career programs will be jointly arranged by the recruiting services to the greatest practical extent.

(f) The National Guard, Air National Guard and Coast Guard, as appropriate, will be encouraged to participate in this secondary school program.

PART 66—RELEASE OF INFORMATION FROM MEDICAL RECORDS

Sec.
66.1 General.
66.2 Individuals and agencies to whom medical records may be released.

AUTHORITY: §§ 66.1 and 66.2 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 66.1 General.

This policy governs the release of information from the medical records of members and former members of the Armed Forces by those bureaus and offices designated by the Secretaries of the Army, Navy and Air Force, to the individuals and agencies hereinafter named. Those bureaus and offices will determine the extent of and the form in which medical information will be furnished. The information will be treated as confidential. Only that information will be furnished which is necessary to the accomplishment of the legitimate purpose for which the information is required.

§ 66.2 Individuals and agencies to whom medical records may be released.

(a) Department of the Treasury.
(b) Department of the Army.
(c) Department of Justice.
(d) The Post Office Department.
(e) Department of the Navy.
(f) Department of Commerce (Coast and Geodetic Survey).
(g) Department of Labor (Bureau of Employees' Compensation).
(h) Department of the Air Force.
(i) Department of State and Central Intelligence Agency (for use in considering prospective employees).
(j) Civil Service Commission (to consider claims under section 2, Act of June 27, 1944, Chapter 287, as amended (5 U.S.C. 851)). In addition, for personnel security investigations conducted under pertinent acts and Executive Orders, accredited agents of the Civil Service Commission may have access, for review purposes, to material designated as records of medical treatment included in official personnel folders of former civilian or military personnel of the military departments, subject to the following conditions:

(1) Access to these records shall be only for investigations required by law or Executive order, or pursuant to special agreement between the Civil Service Commission and the Military Department concerned.

(2) Information contained in the medical treatment records shall be considered confidential in nature and will be used only as a basis for determining security risk.

(3) Such medical information or any other information which may be contained in any reports or other communications contained therein from any agency or source other than the Department of Defense may not be extracted or otherwise used without the prior permission of the originating agency.

(4) Except for the restrictions set forth in subparagraph (3) of this paragraph, the information extracted under the policies set forth herein may be furnished to the employing agency to be used only as a basis for determining security risk.

(k) Department of Health, Education, and Welfare (Public Health Service).
(l) Selective Service.
(m) Veterans' Administration.
(n) Federal Aviation Agency (for use in connection with airman certificates under section 602, Federal Aviation Act of 1958 (49 U.S.C. 1422)).
(o) Duly accredited representatives of the National Academy of Sciences-National Research Council, when engaged in cooperative studies undertaken at the specific request or with the consent of the Surgeon General, U. S. Army; the Surgeon General, U. S. Navy; or the Surgeon General, U. S. Air Force.
(p) Federal or State mental hospitals or penal institutions when the member or former member is a patient or inmate therein.
(q) Registered civilian physicians, upon request of the individual or his legal representative, when required in connection with the treatment of the member or former member of the above services.
(r) The member or former member upon request, except information contained in the medical record which would prove injurious to his physical or mental health. In the latter case the medical information may be furnished to the next of kin, upon request of the individual, or to his legal representative upon his furnishing a certified copy of the court order of appointment (see section 3, act of August 27, 1940 (54 Stat. 859), as amended (50 U. S. C. App. 403 (a)) and subsection 9 (a) Universal Military Training and Service Act (62 Stat. 614; 50 U. S. C. App. 459 (a)).
(s) Directly to the next of kin or legal representative (upon submission by the latter of a certified copy of the court order of appointment), when the member or former member has been adjudged insane or is dead. Next of kin or legal representative will be required to furnish the releasing office with a copy of the court order adjudging the member or former member to be insane, or to furnish adequate proof of death of the member or former member in cases where proof of death is not on file in the office concerned.
(t) A representative, other than a physician or legal representative, specifically authorized in writing by the individual whose records are involved, who is to perform a service for such individual. The next of kin may likewise authorize a representative, where the member or former member is insane or dead. The purpose for which the information is to be used and the nature of the service to be performed must be furnished.
(u) Under procedures established by the Surgeon General of the service concerned, access to individual medical records may be granted to qualified individuals for the purposes of medical research and study.

NOTE: Nothing in this part is intended to preclude the release of appropriate information concerning the current health and welfare of the individuals in the Armed Services, or vital statistical data, including proof of death, concerning such personnel, nor to preclude compliance with court orders calling for the production of medical records in connection with litigation or criminal prosecutions, nor to preclude release of information from medical records when required by law.

PART 70—MEDICAL CARE FOR DEPENDENTS OF MEMBERS OF THE UNIFORMED SERVICES

Sec.
70.1 General information.
70.1–1 Purpose.
70.1–2 Scope.
70.1–3 Definition of terms used in this part.
70.1–4 Administration.
70.2 Determination of eligibility and identification of dependents.
70.2–1 Determination of dependents' eligibility.
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AUTHORITY: §§ 70.1 to 70.11 issued under 10 U.S.C. 1071–1085.

§ 70.1 General information.

§ 70.1–1 Purpose.

The purpose of this part is to prescribe policy for administering the Dependents' Medical Care Act.

§ 70.1–2 Scope.

This part is applicable to the uniformed services.

§ 70.1–3 Definition of terms used in this part.

(a) "Uniformed services" means the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Commissioned Corps of the Coast and Geodetic Survey, and the Commissioned Corps of the Public Health Service.

(b) "Member of a uniformed service" means a person appointed, enlisted, inducted or called, ordered or conscripted in a uniformed service who is serving on active duty or active duty for training pursuant to a call or order that does not specify a period of thirty days or less.

(c) "Retired member of a uniformed service" means a member or former member of a uniformed service who is entitled to retired, retirement, or retainer or equivalent pay as a result of service in a uniformed service, other than a member or former member entitled to retired or retirement pay under Title III of the Army and Air Force Vitalization and Retirement Equalization Act of 1948 who has served less than eight years on full time duty in active military service other than active duty for training.

(d) "Dependent" means any person who bears to a member or retired member of a uniformed service, or to a person who died while a member or retired member of a uniformed service, any of the following relationships:

(1) The lawful wife;

(2) The unremarried widow;

(3) The lawful husband, if he is in fact dependent on the member or retired member for over one-half of his support;

(4) The unremarried widower, if he was in fact dependent upon the member or retired member at the time of her death for over one-half of his support because of a mental or physical incapacity;

(5) An unmarried legitimate child (including an adopted child or stepchild), if such child has not passed his twenty-first birthday;

(6) A parent or parent-in-law, if the said parent or parent-in-law is, or was at the time of the member's or retired member's death, in fact dependent on said member or retired member for over one-half of his support and is, or was at the time of the member's or retired member's death, actually residing in the household of said member or retired member. For the purposes of this directive, the requirement of actually residing in the household shall be fulfilled when the parent or parent-in-law actually resides or was residing at the time of death of a member or retired member, in a dwelling place provided or maintained by said member or retired member; or

(7) An unmarried legitimate child (including an adopted child or stepchild) who (i) has passed his twenty-first birthday, if the child is incapable of self-support because of a mental or physical incapacity that existed prior to his reaching the age of twenty-one and is, or was at the time of the member's or retired member's death, in fact dependent on him for over one-half of his support, or (ii) has not passed his twenty-third birthday and is enrolled in a full-time course of study in an institution of higher learning as approved by the Secretary of Defense or Secretary of Health, Education, and Welfare and is, or was at the time of the member's or the retired member's death, in fact dependent on him for over one-half of his support.

(e) "Dependents eligible for civilian medical care" means the lawful wife or the dependent lawful husband (spouses) and children who are dependents of members of the uniformed services.

(f) "Secretary of a uniformed service" means the Secretary of the Army, Navy (for the Navy and Marine Corps), or Air Force, or for the other uniformed services (Coast Guard, Public Health Service, Coast and Geodetic Survey), the Secretary of Health, Education, and Welfare. The latter may delegate his duties and responsibilities in relation to dependent medical care to The Surgeon General of the Public Health Service.

(g) "The United States" means all of the States and the District of Columbia.

(h) "Executive agent" means the party who acts for the uniformed services in negotiating and administering contracts for medical (physicians) and hospital services under the policy guidance of the Department of Defense.

(i) "Contractor" means the legal entity with which the Government enters into a contract for the purpose of implementing the Dependents' Medical Care Act, such as a state medical society, an insurance company, Blue Shield or Blue Cross.

(j) Miscellaneous medical and technical terminology:

(1) "Diagnosis": A determination of the existence and nature, or absence, of disease or injury by history with physical and mental findings, including physical examinations and the utilization of medically accepted diagnostic procedures, e. g., laboratory tests and pathology and X-ray examinations.

(2) "Outpatient care": The medical services which are normally performed in locations such as the home, a physician's office, or the outpatient department of a hospital, clinic, or dispensary.

(3) *Maternity and infant care.* Medical and surgical care for the mother incident to pregnancy including prenatal care, delivery, post-natal care, including care of the infant, and treatment of complications of pregnancy.

(4) "Domiciliary care": Care which is normally given in a nursing home, convalescent home, or similar institution to a patient who requires personal care rather than active and definitive treatment in a hospital for an acute medical or surgical condition. It includes but is not limited to nursing care required as a result of old age or chronic disease.

(5) "Chronic disease": This term shall be construed to include non-acute conditions and disabilities in which the prognosis indicates long continued duration of the ailment.

(6) "Nervous and mental disorders": This term means those conditions classi-

fied as neuroses, psychoneuroses, psychopathies, or psychoses.

(7) "Dental care as a necessary adjunct to medical or surgical treatment": Dental care determined by the cognizant physician and dentist to be required for the proper treatment of a medical or surgical condition.

(8) *Adjuncts to medical care.* Prosthetic devices such as artificial limbs, artificial eyes, hearing aids, orthopedic footwear, spectacles, and similar medical supports or aids.

(9) "Adjuncts to dental care": Removable or fixed prosthetic or fixed prosthodontic restorations and similar dental supports or aids.

§ 70.1–4 Administration.

(a) The Secretary of Defense has jurisdiction over the Army, Navy, Air Force, Marine Corps, and the Coast Guard when operating as a service with the Navy.

(b) The Secretary of Health, Education, and Welfare has jurisdiction over the Public Health Service and for medical care purposes over the Coast and Geodetic Survey, and the Coast Guard when not in service with the Navy.

§ 70.2 Determination of eligibility and identification of dependents.

§ 70.2–1 Determination of dependents' eligibility.

(a) The uniformed services will require dependents (or their sponsors) who request medical care to furnish proof of their eligibility for such care. In order to develop uniformity in the criteria utilized by the uniformed services to determine dependents eligible for medical care, the uniformed services will utilize, as soon as practicable, DD Form 1172,[1] "Application for Uniformed Services Identification and Privilege Card." Implementation and use of this form shall be completed not later than December 31, 1957. Pending use of this DD Form, existing procedures for determining dependents' eligibility for medical care, employed by the respective services, will be continued. Modifications of DD Forms 1172 and 1173 may be made, subject to the approval of the Office, Secretary of Defense.

(b) The Secretaries of the uniformed services and their designees are hereby authorized to make determinations of dependency for purposes of this part.

§ 70.2–2 Identification of dependents.

(a) Upon an affirmative determination by the Secretary of a uniformed service or his designee that a dependent is eligible for medical care, such dependent will be issued a "Uniformed Services Identification and Privilege Card", DD Form 1173.[1] The DD Form 1173 will serve as the primary means of identifying dependents eligible for medical care.

(b) The administrative provisions governing the application for the DD Form 1173 and its issuance to dependents of members and dependents of retired members of the uniformed services and dependents of persons who died while a member or a retired member of a uniformed service will be as prescribed by the Secretary of the uniformed service concerned. However, such regulations for active duty members with dependents will include but not be limited to provisions for the following:

(1) *Issuance.* Application for, and issuance of, DD Form 1173 will be accomplished at the following times:

(i) Upon entry on active duty for a period in excess of 30 days.

(ii) Upon re-enlistment.

(iii) Upon change in dependency status stated on current authorization card.

(iv) Upon certification of loss.

(v) Upon retirement or death.

(2) *Surrender.* The DD Form 1173 shall be surrendered:

(i) Whenever a new card is issued except to replace loss.

(ii) Upon expiration date.

(iii) Whenever the cardholder becomes ineligible.

(iv) Upon death, retirement or release of member to inactive duty.

(3) *Expiration date.* The DD Form 1173 shall be effective for the contracted period of service of the sponsor upon whom the entitlement is based in the case of dependents of the uniformed services, or in the case of minors the 21st birthday if it occurs prior to the termination of the service of the sponsor, except that for entitlement to medical care, the provisions of paragraph (d) (7) of § 70.1–3 will apply. The departments will insure that sponsors are directed to notify the appropriate authority immediately upon any change in status that would terminate or modify the right to any of the benefits for which the card may be used.

(4) *Dependents listed.* Each dependent, ten years or over, entitled to medical care, will be issued DD Form 1173. Certification of minor dependents, under ten years of age, for eligibility for medical care will be the responsibility of the dependent, accompanying parent, member or acting guardian.

(5) *Entitlement to care in civilian facilities.* All DD Forms 1173 will contain an appropriate notation as to those dependents who have entitlement to medical care at both medical facilities of the uniformed services and civilian medical facilities. Thus, each card covering a dependent eligible for civilian medical care (see § 70.1–3(c)) will have a notation thereon showing that care in civilian facilities is authorized even though the situations in which such care may be obtained at Government expense are limited. For example, such a dependent residing with the sponsor, or living in an area to which the sponsor is assigned, and whose freedom of choice has been restricted pursuant to § 70.3–2 shall not be entitled generally to receive medical care in civilian facilities at Government expense, but shall be so entitled only in the case of an emergency and under other circumstances outlined in this part or in the joint regulations.

(c) The original issuance and use of the DD Form 1173 will be accomplished by all the uniformed services as soon as practicable, but in no event later than 31 December 1957.

§ 70.3 Determination of sources from which eligible dependents receive medical care.

§ 70.3–1 Among uniformed services facilities.

Normally, a dependent requesting care at a uniformed services facility will be expected to use the facilities servicing the area in which the dependent resides.

§ 70.3–2 Between civilian medical facilities and uniformed services facilities within United States and Puerto Rico.

(a) Dependents eligible for civilian medical care who are not residing with their sponsors, or in an area to which their sponsor is assigned, shall have free choice between uniformed services medical facilities and civilian medical facilities.

(b) Outpatient medical care at Government expense for dependents eligible for civilian medical care is not authorized from civilian sources, except that certain specified treatment for such dependents who are not hospitalized, will be authorized when in accordance with § 70.5–2(f); § 70.5–3(d) (1), (2), and (3); or § 70.5–6(i).

(c) Dependents eligible for civilian medical care who reside with their sponsors, or in an area to which their sponsor is assigned, shall have free choice between uniformed services medical facilities and civilian medical facilities except that the Secretary of a uniformed service with the approval of the Secretary of Defense or the Secretary of Health, Education, and Welfare, as appropriate, may require such dependents in a prescribed area to seek medical care in a uniformed services medical facility if he finds that:

(d) When necessary restrictions on freedom of choice for a particular medical facility are imposed, the Secretary of a uniformed service may prescribe a local geographic area which the medical facility concerned shall serve normally. In determining the boundaries of the geographic area, consideration shall be given to normal commuting time, distance, and unusual geographic and transportation factors such as toll bridges or ferries which would increase unreasonably the time and expense of travel. It shall be the responsibility of the Secretary of a uniformed service, when imposing necessary restrictions upon the freedom of choice of a dependent, to ensure liaison and coordination among all uniformed services and civilian medical facilities in and adjacent to the geographical area in which restrictions have been imposed. When any restrictions on freedom of choice have been imposed or removed, the Executive Agent shall be so advised.

(e) In lieu of the restrictions described in paragraphs (c) and (d) of this section, the Secretary of Defense may specify a date as of which the restrictions described below will be effective. On and after the specified date, a restriction on freedom of choice shall be effective as to dependents in the United States and Puerto Rico, who are eligible for civilian medical care, who reside with

[1] Filed as part of the original document.

their sponsors, or in an area to which their sponsor is assigned, who require care authorized under this Part 70 from civilian sources but have not commenced receiving such care from civilian sources on the aforesaid specified date (or, in the case of a maternity patient, whose care by her civilian physician on that date has not reached the second trimester), and who reside in an area where adequate medical facilities of a uniformed service are available for such dependents. No restriction on freedom of choice will be imposed on such dependents residing in areas where adequate medical facilities of a uniformed service are not available. However, in order that the restriction may be appropriately administered, each dependent who resides with the sponsor, or in an area to which the sponsor is assigned, and who requires care authorized under this Part 70 from civilian sources but has not commenced receiving such care from civilian sources on the specified date (or, in the case of a maternity patient, whose care by her civilian physician on that date has not reached the second trimester), will be required to contact a uniformed services installation. For those residing in areas where an adequate medical facility of a uniformed service is not available, DD Form 1251, "Nonavailability Statement", authorizing care from civilian sources at Government expense will be issued. Such a statement may also be issued to a dependent residing with the sponsor, or residing in an area to which the sponsor is assigned, when the capability does not exist in the medical facility (or facilities) of the uniformed services in the area to provide the required care because of lack of necessary staff, facilities, or space. The DD Form 1251, issued in the manner described above, shall be evidence of entitlement of the dependent to care authorized under this Part 70 from civilian sources at Government expense. In determining whether a dependent covered under this paragraph (e) is residing in an area where adequate medical facilities of a uniformed service are available, the criteria outlined in paragraphs (c) and (d) of this section shall apply. Detailed procedures concerning the format of the DD Form 1251 and the manner in which it is to be issued may be set forth in the Joint Regulations. Spouses and children are considered to be residing with their sponsor if they reside in the area to which the sponsor is assigned, in the area of his permanent duty station, or the home port or home yard of a ship, even though the sponsor may be temporarily away, by reason of temporary duty with his unit or ship, from the area to which he is assigned, the permanent duty station or his home port or home yard respectively, or by reason of the sponsor's absence on individual temporary duty or temporary additional duty order.

§ 70.3–3 Exceptions; emergency care and other circumstances.

(a) Any restrictions on freedom of choice and the requirement for the DD Form 1251 [1] described in § 70.3–2(e) shall be waived:

(1) When circumstances indicate that it was necessary for the eligible dependent to obtain authorized medical care from civilian facilities due to a bona fide emergency, e.g. serious injury following an accident or illness or sudden onset requiring immediate treatment authorized to be obtained from civilian sources at the nearest available medical facility to preserve life, health, or to prevent undue suffering; or

(2) During the period of absence on a trip of the eligible dependent from the area to which the sponsor is assigned. This exception is not to be used to circumvent the restrictions imposed on freedom of choice.

(3) When an eligible dependent wife, whose husband dies while on active duty, is pregnant at the time of his death. (See § 70.5–5(e)).

(b) Additionally, the restrictions initially imposed by the Secretary of Defense on a specified date pursuant to § 70.3–2(e) and the requirement for a DD Form 1251 [1] described therein shall be waived with regard to any eligible dependent who has commenced receiving care authorized under this Part 70 from civilian sources prior to that specified date (except that, for maternity patients, care in the second trimester by her civilian physician on that date must have commenced prior thereto). The dependent involved will be entitled to complete any care which was authorized under this Part 70 prior to the date specified by the Secretary of Defense and which has been commenced in accordance with the preceding sentence.

[1] Filed as part of the original document.

§ 70.3–4 Between civilian medical facilities and uniformed services facilities outside the United States and Puerto Rico.

Dependents eligible for civilian medical care who are not residing with their sponsors, or in an area to which their sponsor is assigned, shall have free choice between uniformed services medical facilities and professionally acceptable local civilian sources. Where medical facilities of the uniformed services are available within the area and are capable of providing the required care, spouses and children outside the United States and Puerto Rico who are residing with their sponsors, or in an area to which their sponsor is assigned, will utilize these facilities for such care. In areas where medical facilities of the uniformed services are nonexistent or incapable of providing adequate medical care, spouses and children who are residing with their sponsors, or in an area to which their sponsor is assigned, may be authorized civilian medical care from professionally acceptable local sources in accordance with this Part 70.

§ 70.4 Medical care for dependents at medical facilities of the uniformed services.

§ 70.4–1 *Authority for providing medical care to dependents.* Whenever requested, medical care shall be given dependents of members and dependents of retired members of the uniformed services, and dependents of persons who died while a member or a retired member of a uniformed service, in medical facilities of the uniformed services subject to the availability of space and facilities, and the capabilities of the professional staff. Determinations made by the medical officer in charge of the medical facility, or by his designee, as to availability of space, facilities, and the capabilities of the professional staff, shall be conclusive. The furnishing of medical care to dependents shall not interfere with the primary mission of those facilities.

§ 70.4–2 Facilities available.

In making the determination of the availability of medical facilities at a specific location, the following criteria shall be applied:

(a) Mission of the uniformed services medical facility.

(b) Adequacy of professional care available for diagnosis and treatment.

(c) Maximum number of patients who can be treated without sacrificing high professional medical standards.

(d) Optimum utilization of facilities of the uniformed services.

§ 70.4–3 Medical care authorized.

(a) Medical care of dependents in the facilities of the uniformed services shall be limited to the following:

(1) Diagnosis.

(2) Treatment of acute medical conditions, including acute exacerbations or acute complications of chronic diseases.

(3) Treatment of surgical conditions.

(4) Treatment of contagious diseases.

(5) Immunization.

(6) Obstetrical and infant care.

(b) Treatment may be provided for acute emergencies of any nature which are a threat to the life, health, or well-being of the patient including acute emotional disorders. Hospitalization is authorized at Government expense for such emergencies only pending completion of arrangements for care elsewhere unless the illness or condition also qualifies for care under paragraph (a) (1), (2), (3), (4) or (6) of § 70.4–3. With special exceptions as authorized by the Surgeon General of a uniformed service, additional care in a hospital of the uniformed services on a space available basis may be provided in accordance with paragraph (b) of § 70.4–4.

(c) When a hospitalized dependent patient requires care beyond the capabilities of the medical facility, the commanding officer or officer-in-charge of the facility is authorized to:

(1) Transfer the patient to the nearest medical facility of the uniformed services where the required treatment is available. Government transportation may be utilized to effect such transfer; or

(2) Procure from civilian sources the necessary supplemental material and professional and personal services required for the proper care and treatment of the patient in his facility.

The authorization provided by this paragraph (c) is applicable after admission of the patient when the patient's condition so requires.

§ 70.4–4 Medical care not authorized.

Dependents shall not be provided:

(a) Hospitalization at medical facilities of the uniformed services for the following:

(1) Chronic diseases. (See paragraph (j)(6) of § 70.1–3 and paragraph (a)(2) of § 70.4–3.)

(2) Nervous and mental disorders. (See paragraph (j)(7) of § 70.1–3.)

(3) Medical or surgical care that is desired or requested by the patient which, in the opinion of cognizant medical authority is not medically indicated; e. g., surgery solely for cosmetic purposes.

(4) Domiciliary Care. (See paragraph (j)(4) of § 70.1–3.)

(b) However, in special and unusual cases, exceptions may be made by a Surgeon General of the uniformed services and hospitalization may be provided for such disorders or diseases as set forth in paragraph (a) (1) and (2) of this section. In no instance, may the period of hospitalization exceed 12 months.

(c) Artificial limbs, artificial eyes, hearing aids, orthopedic footwear and spectacles, except that outside of the United States and at remote stations within the United States, as designated by the Secretary of the uniformed service concerned and approved by the Secretary of Defense where adequate civilian facilities are not available, those items, if available from Government stocks, may be provided to dependents at invoice cost to the Government.

(d) Ambulance service, except in acute emergency as determined by the medical officer in charge.

(e) Home calls, except in special cases where it is determined by the cognizant medical authority to be medically necessary.

§ 70.4–5 Dental care.

(a) Dental care for dependents is not authorized except:

(1) Emergency dental care to relieve pain and suffering, but not to include any permanent restorative dentistry or dental prosthesis;

(2) Dental care as a necessary adjunct to medical or surgical treatment. (See paragraph (j)(8) of § 70.1–3; and

(3) Outside the United States, and in remote areas within the United States as designated by the Secretary of the Army, Navy, or Air Force and approved by the Secretary of Defense where adequate civilian dental facilities are not available to personnel at or near military installations; or as designated by the Surgeon General, U.S. Public Health Service, and approved by the Secretary of Health, Education, and Welfare for those facilities over which jurisdiction is provided in § 70.1–4(b).

§ 70.4–6 Admission of dependents for medical care.

(a) As indicated in § 70.2–2, the DD Form 1173 will serve as the primary means of identifying dependents eligible for medical care. However, pending use of DD Form 1173, existing methods and procedures for identifying dependents eligible for medical care may be continued within each of the respective services with such immediate modifications of established procedures as are required to permit all eligible dependents access to medical care.

(b) Procedures for admission of dependents requesting medical care at uniformed services medical facilities prior to 1 January 1958 will be as currently established by the admitting facility.

(c) Procedures for admission of dependents requesting medical care at uniformed services medical facilities after 31 December 1957 will be as follows:

(1) Identification will be by means of a DD Form 1173. Uniformed services medical facilities may prescribe such additional local procedures as necessary. However, these procedures should not complicate, delay or preclude treatment of an eligible dependent nor discriminate against the dependent of members of other services.

(2) Under emergency conditions and similar circumstances, the admitting authority may waive the requirement of producing DD Form 1173. However, in each such instance at uniformed services medical facilities certification will be required attesting to the dependent's eligibility for medical care. This certification will be executed by either the dependent, the member, retired member, parent or guardian as appropriate.

§ 70.4–7 Cross-utilization of service medical facilities.

To provide effective cross-utilization of medical facilities of the uinformed services, eligible dependents, regardless of service affiliation, shall be given equal opportuinty for medical care. Such dependents may request and be furnished medical care at the medical facility of the uinformed service serving the area in which they reside or in the medical facility of the sponsor's own uniformed service depending upon the capability of the medical facilities concerned. In areas where medical facilities of two or more uniformed services are available, the appropriate officials of each service, with due consideration for the relative size and capabilities of the medical facilities, shall participate jointly in determining the capabilities and establishing areas of medical responsibility. Delineation of such areas shall be published jointly and will include zones in which dependents are permitted to use either the facilities of the sponsor's own service or the facilities which have medical responsibility for the area in which the dependent resides. In addition, commanders of uniformed services hospitals will establish necessary liaison and coordination with the representatives of the local medical society and the civilian hospital facilities as appropriate, to ensure to the maximum extent possible, the smooth referral of excess dependent patient loads to civilian medical facilities when such referrals appear desirable.

§ 70.4–8 Charges for dependent medical care.

When medical care is provided dependents in facilities of the uniformed services, the patient shall pay the following charges:

(a) *Inpatient care.* The per diem rate of charge for inpatient care provided dependents is $1.75 which includes cost of subsistence.

(b) *Outpatient care.* As a restraint on excessive demands for medical care, uniform minimal charges may be imposed for outpatient care only after a special finding by the Secretary of Defense after consultation with the Secretary of Health, Education and Welfare that such charges are necessary. The Secretaries of the uniformed services shall have continuing responsibility for determining the nature and extent of possible abuses of outpatient care in uniformed services medical facilities and shall so advise the Secretary of Defense when their findings are in the affirmative.

§ 70.4–9 Transportation of patients.

Commercial or civilian transportation to move dependent patients to medical facilities of the uniformed services, between medical facilities of the uniformed services, or from a civilian medical facility to a medical facility of the uniformed services is not authorized at Government expense.

§ 70.5 Medical care in civilian facilities.

§ 70.5–1 Eligibility for civilian medical care.

Under the provisions of this section, wives, dependent husbands and children who are dependents of members of the uniformed services are eligible to receive at Government expense specified medical or dental care from civilian sources.

§ 70.5–2 Medical and hospital care authorized from civilian sources.

Medical and surgical care from civilian sources is authorized for spouses and children who are dependents of members of the uniformed services for the following:

(a) Treatment of acute medical conditions, including acute exacerbations or acute complications of chronic diseases only during hospitalization except as otherwise provided in this part.

(b) Treatment of surgical conditions only during hospitalization except as otherwise provided in this part. (See § 70.5–4(c)).

(c) Treatment of contagious diseases during hospitalization.

(d) Complete obstetrical and maternity care.

(e) Three hundred sixty-five days' hospitalization in semi-private accommodations for each admission, including all necessary services and supplies furnished by the hospital during hospitalization.

(f) Services required of a physician or surgeon prior to and following hospitalization for a bodily injury or surgical operation.

(g) Treatment in a hospital for an acute emotional disorder is authorized provided that such disorder is considered to constitute an emergency which is a threat to the life or health of a patient. In general, care will be provided for an acute emotional disorder under this section only until the disorder subsides,

until arrangements are made for care elsewhere, or until the end of 21 days of hospitalization, whichever occurs earliest. Under procedures to be established by the Executive Agent, or his representative, within the United States and Puerto Rico, and by the Secretaries of the uniformed services, or their representatives, outside the United States and Puerto Rico, extension beyond 21 days may be granted on a case-by-case basis where the member or the dependent, or the representative of either, shows that, due to absence (e.g. overseas assignment when dependent is in the United States), the member was unable to make arrangements for care elsewhere within the 21-day period. With special exceptions, as authorized by the Surgeon General of a uniformed service, additional care for an acute emotional disorder in a hospital of the uniformed services on a space available basis may be provided in accordance with § 70.4–4(b). The commanding officer of a uniformed services hospital, or the Surgeon General of a uniformed service having jurisdiction over a hospital, may authorize transfer of any patient, hospitalized in a civilian hospital under any of the above subparagraphs, to that uniformed services medical facility on the basis of space, facility, and personnel availability. (See §§ 70.4–2 and 70.4–3.) In cases covered by the two preceding sentences, Government transportation may be utilized to effect transfer to a uniformed services hospital.

(h) Diagnostic tests and procedures including laboratory tests and pathology and X-ray examinations, when ordered by the attending physician, only during hospitalization, except as otherwise provided in this part.

(i) Dental care which is a necessary adjunct to medical or surgical treatment rendered in a hospital to a dependent who is a hospital inpatient. Such dental care shall not include removable or fixed prosthodontic restorations, orthodontia, restorative dentistry, and prolonged periodontal treatment.

§ 70.5–3 Terms of reference and rules for the provision of authorized medical care from civilian sources.

(a) *Applicable terms.* (NOTE: These terms are primarily for use in the United States and Puerto Rico and may be modified in other areas.)

(1) *Hospital.* The word "hospital" shall mean only an institution which is operated in accordance with the laws of the jurisdiction in which it is located pertaining to institutions identified as hospitals, is primarily engaged in providing diagnostic and therapeutic facilities for surgical and medical diagnosis, treatment and care of injured and sick persons by or under the supervision of staff physicians or surgeons, and continuously provides 24-hour nursing service by registered graduate nurses. It shall specifically exclude any institution which is primarily a place of rest, a place for the aged, a place for the treatment of drug addiction or alcoholism, a nursing home, a convalescent home, or a facility operated by the Federal Government or any agency thereof, except Freedmen's Hospital, Washington, D. C. If the experience of the Executive Agent indicates that the care provided in a hospital is substandard, or charges of a hospital are excessive, Government approval of its use in the future may be withdrawn and payment of charges by the Government denied for patients admitted subsequent to the withdrawal of approval unless the case is certified as an emergency by the attending physician or surgeon.

(2) *Semi-private accommodations.* The term "semi-private accommodations" signifies the presence of 2, 3, or 4 beds in a room in which a patient is hospitalized. Private accommodations means one bed in a room.

(3) *Ward accommodations.* The term "ward accommodations" signifies the presence of 5 or more beds in a room in which the patient is hospitalized. Where ward accommodations are furnished under the circumstances described herein, a portion of the cost will be borne by the Government in accordance with paragraph (a) of § 70.5–6. Ward facilities may be used for pediatric cases whenever this is the normal medical practice. Further, when the attending physician admits his patient to a hospital in which all semi-private accommodations are occupied, care furnished therein shall be considered authorized care, but the patient should be transferred to a semi-private accommodation as soon as possible. Finally, when the patient is admitted to an otherwise eligible institution which furnishes only ward accommodations, care furnished therein shall be considered authorized care.

(4) *Necessary services and supplies.* Those services and supplies ordered by the attending physician which are customarily provided and charged for by the hospital.

(5) *Physician or surgeon.* A person who is legally qualified to prescribe and administer all drugs and to perform all surgical procedures.

(6) *Dentist.* A person who is legally qualified to prescribe and administer all drugs and perform all procedures related to the teeth, jaws, and to structure contiguous to one or the other.

(7) *Local schedule of allowances.* Professional fees for payment of physician's services applicable to a local area negotiated with the physicians' representatives and approved by the Executive Agent for the Department of Defense and Department of Health, Education, and Welfare.

(b) *Hospital care.* (1) Hospital care under this section is defined as inpatient care for 18 consecutive hours or more, except for shorter periods of hospitalization for surgical procedures, treatment of fractures or other bodily injuries, or in instances in which death occurs in a lesser period of time.

(2) Hospital care shall include board and room and necessary services and supplies up to a maximum of 365 days for each admission.

(c) *Nursing care.* If, while receiving authorized hospital care, private-duty nursing care is required for proper care and treatment, and if the patient's attending physician certifies to such a requirement, a portion of the cost will be borne by the Government in accordance with § 70.5–6 (d).

(d) *Professional services*—(1) *Professional services related to hospitalization.* (i) The payment of physicians' fees according to the local schedules of allowances, including those of necessary consultants, for treatment of medical and surgical conditions during a period of hospitalization is authorized.

(ii) All diagnostic and therapeutic tests and procedures authorized by the attending physician and accomplished during a period of hospitalization are authorized for payment by the Government. In those instances during the period of hospitalization when treatment by the use of X-ray, radium or radioisotopes is prescribed, such treatment may be continued or carried out on an outpatient status.

(iii) The approved local schedules of allowances payable to a physician or surgeon for treatment in a hospital of a bodily injury or for a surgical procedure shall include pre-hospitalization care and normal after-care following a period of hospitalization.

(iv) Those surgical procedures that are legitimately cared for by a dentist (e. g., cleft lip, cleft palate, etc.) may be treated by a dentist who is a member of the staff of a hospital and normally performs these surgical procedures in that hospital. The removal of teeth, gingivectomies, and alveolectomies are not authorized surgical procedures under the Program unless they meet the criteria of adjunctive dental care as defined in this part. When authorized surgical treatment is performed by a dentist, other procedures, diagnostic tests, services, and supplies authorized or ordered by him may be paid to the same extent as if a physician or surgeon authorized or ordered them under this part.

(v) Although the Dependents' Medical Care Act provides primarily for professional services during hospitalization and does not permit medical care normally considered to be outpatient care at Government expense, certain limited benefits are authorized as indicated elsewhere in this section and below:

(*a*) Payment is authorized in an amount not to exceed $75.00 at Government expense for necessary diagnostic tests and procedures performed or authorized by the attending physician prior to hospitalization for the same bodily injury or surgical procedure for which hospitalized.

(*b*) Payment is authorized in an amount not to exceed $50.00 at Government expense for necessary tests and procedures performed or authorized by the attending physician for proper after-care of the same bodily injury or surgical procedure for which hospitalized.

(*c*) The monetary limitations in (*a*) and (*b*) of this subdivision are intended only to define the liability of the Government under the stated conditions and in no way modify, alter, or affect the fees for individual procedures contained in the local schedules of allowances; and also, they do not restrict the physician

in the performance or authorization of necessary tests or procedures.

(*d*) The monetary limitations in (*a*) and (*b*) of this subdivision may be exceeded only in special and extraordinary cases provided that the physician authorizing the tests and procedures, for which charges exceed the amounts specified above, submits a special report which shall be reviewed by a contractor's physician review board. This board will make appropriate recommendations to the Executive Agent who may authorize such additional payments.

(2) *Obstetrical and maternity services.* (i) Complete obstetrical and maternity services shall include prenatal care, delivery, and postnatal care in a hospital, office, or home. Payments for prenatal care, delivery, and post-partum care shall be made to the physician performing the respective service in accordance with the local schedule of allowances.

Allowances are authorized for laboratory tests, pathology or radiology examinations, and other procedures performed or authorized by the attending physician in the management of the pregnancy. In instances of home or office confinements, payments are not authorized for the purchase or rental of beds, bassinets, or similar equipment, nor for services of private duty nurses. (See paragraph (f) of § 70.5–6.)

(ii) Where a consultant's services are required for proper care and treatment of the patient, such care is authorized.

(iii) Necessary or required infant care shall be provided during the period of hospitalization following delivery. If the infant requires further hospitalization following delivery, such care is authorized as a continuation of the original admission. Also, in the case of a home or office delivery, necessary or required infant care may be provided on an outpatient basis for a period not to exceed 10 days following the date of delivery.

(iv) Under procedures established by the Executive Agent, or his representative, within the United States and Puerto Rico, and by the Secretaries of the uniformed services, or their representatives, outside the United States and Puerto Rico, required in-hospital care can be furnished to obstetrical and maternity patients who develop acute emotional disorders complicating pregnancy or constituting postpartum psychosis occurring within the six weeks postpartum period authorized for maternity care.

(3) *Other professional services.* The authorized payments for the treatment of bodily injuries when a patient is not hospitalized, including diagnostic and therapeutic tests and procedures authorized by the attending physician, are limited to treatment of fractures, dislocations, lacerations, and other wounds as prescribed in the local schedules of allowances. Treatment of fractures, dislocations, lacerations, and other wounds that are legitimately cared for by dentists, including related diagnostic and therapeutic tests and procedures authorized by the attending dentist, may also be paid for hereunder. (See § 70.5–6 (i)).

(e) *Supporting services.* Wherever the attending physician authorizes the services of a physical therapist or of an anesthetist who is other than a physician in rendering authorized care to an eligible dependent, and certifies as to the necessity therefor, the services may be paid for hereunder.

§ 70.5–4 Medical care not authorized.

Medical care specified in this section shall not be authorized for any of the following:

(a) Chronic diseases. (See paragraph (j)(6) of § 70.1–3 and paragraph (a) of § 70.5–2.)

(b) Nervous and mental disorders (see § 70.1–3(j)(6), including acute emotional disorders except that (1) care of this type may be furnished to a dependent requiring same during the period of hospitalization of that dependent for a condition that does qualify as authorized care under § 70.5–2 (a) through (f); (2) care for acute emotional disorders may be furnished in connection with obstetrical and maternity services in accordance with § 70.5–3 (d)(2)(iv); and (3) care for acute emotional disorders may be furnished in accordance with § 70.5–2(g).

(c) Services of a surgical nature desired or requested by the patient which are not medically indicated. The opinion of the cognizant medical authority (charge physician) will determine whether the services are medically indicated and therefore payable under this part, except that the types of surgery described in subparagraph (1) of this section are not authorized for payment under this part under any circumstances; and the types of surgery described in subparagraph (2) of this section are authorized only under the conditions stipulated therein.

(1) *Examples of types of surgical care not authorized.* (i) Cosmetic surgery—any surgery for improvement or change of appearance or for psychological reasons.

(ii) Ears—reconstruction and/or revision of the external ear; surgery based on psychological reasons.

(iii) Congenital defects of skeletal and/or central nervous system which are readily identifiable as representing chronic long-term conditions and characteristically respond poorly to surgical intervention.

(iv) Sterilization procedures for multiparity, socioeconomic and/or psychological reasons.

(v) Procedures designed to correct a state of infertility or sterility.

(vi) Removal of tatoos.

(2) *Examples of types of inpatient surgical care authorized for payment only if certain conditions prevail.* (i) Ears—surgery for restoration or improvement of hearing is allowable.

(ii) Eyes—surgery for glaucoma, cataracts, strabismus (squint) or other conditions to aid or improve vision of the affected eye(s) is allowable.

(iii) Harelip and/or cleft palate—surgery for initial repairs, including surgery for subsequent repair known and established as a requirement at the time of original surgery is authorized. Subsequent revisions are not authorized.

(iv) Rhinoplasties—authorized only for improvement of nasal respiratory physiology.

(v) Skeletal defects (e.g. club foot, congenital dislocated hip)—surgical treatment is authorized only when treatment is required as an "in-hospital" patient to improve function. Care normally provided on an out-patient basis and not requiring hospitalization is not authorized.

(vi) Surgical treatment for removal of supernumerary digits or for correction of syndactylism is authorized only for improvement of function.

(vii) Scars—surgical treatment is authorized only when a scar is ulcerated, shows clinical evidence of malignancy, or when a contracture impairing anatomical function is present.

(viii) Surgical treatment for removal of nevi, hemangiomas and/or telangiectatic lesions is authorized only if they are bleeding, ulcerated, painful, or show clinical evidence of malignancy, or if size and location produce functional impairment.

(ix) Surgical treatment for removal of planter warts, verrucae, sebaceous cysts, condylomata or moles is authorized only if they are bleeding, ulcerated, painful, or show clinical evidence of malignancy, or if size and location produce functional impairment.

(x) Mammaplasty is authorized only when severe pain or marked disability is present.

(xi) Tubal ligation or other sterilization procedures—surgical procedure is authorized only when, in the opinion of the charge physician and consulting physician(s), the procedure is a necessary requirement in the proper medical management of an otherwise unrelated medical or surgical condition for which treatment is authorized under this part.

(d) Non-acute medical conditions (see § 70.5–2(a)). Examples of types of care not authorized are set forth below:

(1) Procedures designed to determine state of infertility or sterility.

(2) Pseudocyesis (false pregnancy) or pregnancy suspected but not proven.

(3) Tests to determine pregnancy, except when patient is in fact pregnant and when tests are required for proper conduct of maternity or postpartum care (hydatid mole).

(4) Diagnostic evaluation and hospital admissions in connection therewith when patients are not acutely ill or when diagnostic surveys are not followed by surgery.

(5) Rehabilitation procedures for persons with congenital defects, cerebral palsy, or poliomyelitis (except when related to "in-hospital" care of surgical procedure performed for improvement or restoration of function).

(6) Treatment for tuberculosis—inactive (non-acute) when determined by clinical tests. Treatment is authorized only for the active (acute) phase as determined by acceptable medical standards (positive sputa; positive gastric washings; or positive chest or other X-rays).

(7) Tests and procedures such as the following:

(i) Psychological, psychometric, or intelligence measuring tests.

(ii) Speech and/or hearing therapy, remedial reading, or orthoptic training.

(iii) Child guidance therapy.

(e) Domiciliary care. (See paragraph (j)(4) of § 70.1–3.)

(f) Treatments or procedures normally considered to be outpatient care.

(g) Ambulance service, or other civilian transportation used for movement of spouses or children to or between civilian medical facilities or from a civilian medical facility to a medical facility of the uniformed services.

(h) Adjuncts to medical care (See § 70.1–3(j)(8)).

§ 70.5–5 Admission of dependents for medical care to civilian sources.

Dependents requesting medical care from civilian sources will be required to observe the following procedures:

Prior to 1 January 1958, identification will be established by the best available means, including the DD Form 720, "Dependent's Identification Card," or DD Forms 1173 which have been issued, and such other means of identification currently provided by the uniformed services. In addition, dependents or or their parent, sponsor or guardian, as appropriate, will be required to execute a certification form to be prescribed by the Executive Agent and made available to the source of medical care. This form will serve the purpose of assisting both in the identification of dependents and the ultimate billing made by civilian physicians, surgeons, and civilian medical facilities. In developing this form, the Executive Agent will insure that it will include appropriate provision for:

(1) Identification of the patient.

(2) Identification of sponsor member or uniformed service on active duty.

(3) Certification of the dependent, accompanying parent, member or acting guardian as to the eligibility of the dependent for care under P. L. 569—84th Congress.

(4) Diagnoses, medical services furnished and charges.

(5) Certification by the source of medical care that services were provided in accordance with P. L. 569—84th Congress.

(b) *After 31 December 1958.* (1) Identification will be by means of the DD Form 1173 and, in addition, execution of the form described in paragraph (a) of this section will also be required.

(2) Under emergency conditions and similar circumstances, the admitting authority may waive the requirement of producing a DD Form 1173. However, in each instance of this nature, the form prescribed by the Executive Agent and referred to in paragraph (a) of this section will be executed.

(c) On and after the effective date specified by the Secretary of Defense pursuant to § 70.3–2(e), an eligible dependent who is residing with the sponsor, or in the area to which the sponsor is assigned, and who has not commenced receiving care from civilian sources prior to that date (or, in the case of a maternity patient, whose care from her civilian physician on that date has not reached the second trimester), in addition to complying with paragraphs (a) and (b) of this section, will be required to present a DD Form 1251, "Nonavailability Statement",' to the attending physician and the hospital, when both are involved, and to the appropriate party when only one is involved, for attachment to the claim form. Sources of civilian care other than the hospital or the attending physician may, in lieu of attaching a DD Form 1251 to the claim form, accept a statement from the person signing the certification in accordance with paragraph (a) of this section that a DD Form 1251 has been furnished to the attending physician (identifying him by name) or to the hospital (identifying it by name). The DD Form 1251 shall be obtained from uniformed services installations and shall cover only care authorized to be obtained from civilian sources under this Part 70. A statement by the person signing the certification in accordance with paragraph (a) of this section that the patient is not residing with the sponsor, or in the area to which the sponsor is assigned, may be accepted by the source of care unless that source has actual knowledge to the contrary. The requirement for the DD Form 1251 shall be waived in the case of an emergency, and in other circumstances outlined in § 70.3–3. A statement from the attending physician on the claim form that the case is an emergency (see § 70.3–3(a)(1)) will be away on a trip from the area to which the sponsor is assigned will be sufficient to justify an exception, unless the source of care has actual knowledge to the contrary. Where representations are made by the source of civilian medical care that it was not aware of the requirements contained in this paragraph (c) and that it furnished care authorized under this Part 70 to a person claiming to be a spouse or child eligible for civilian medical care, and possessing a valid DD Form 1173, then the matter will be brought to the attention of the uniformed service concerned for determination whether a Nonavailability Statement can be issued. If it is determined by the uniformed service concerned that the DD Form 1251 cannot be furnished, then the matter will be brought to the attention of the member concerned as an unpaid debt. In special circumstances, and where the source of civilian care shows that collection has not been possible, then the Executive Agent or his designee may authorize payment to be made to that source, provided the claim covers care authorized under this Part 70 and was otherwise executed in accordance with all requirements except those set forth above concerning the Nonavailability Statement.

(d) In cases of spouses and children receiving treatment in a civilian medical facility at Government expense at the time entitlement to receive medical care from civilian sources ceases (by reason of release from active duty, or otherwise), the Government's responsibility ceases, insofar as the source of civilian care is concerned, as of the date of receipt of knowledge by the source of care that the dependent's entitlement to medical care from civilian sources has terminated or the normal expiration date on the DD Form 1173, whichever is earlier. In any case, the Government's responsibility ceases, insofar as the dependent or member is concerned, as of the date the dependent ceases to be entitled to receive care (by reason of release of the member from active duty, or otherwise) from civilian sources at Government expense. (See § 70.2–2(b)(5.) Notwithstanding the foregoing, the Government will be responsible for paying for care rendered to patients covered by paragraph (c) of this section, only if the conditions set forth in that paragraph are met.

(e) Exceptions to the policy in § 70.5–5(d) are authorized under the following circumstances:

(1) Spouses and children of members of the uniformed services receiving treatment in a civilian medical facility at Government expense at the time of death of the member, or such spouses and children requiring care in a civilian facility as a result of being in the same accident or the same episode which proved fatal to the member, if continued hospitalization is required, shall be transferred to a uniformed services medical facility as soon as the physical condition of the patient permits, subject to space, facilities, and personnel availability. Government transportation may be utilized to effect transfer to a uniformed services hospital. The cost of medical and hospital care authorized from civilian sources (see § 70.5–2) which was furnished to the dependent during the period of hospitalization in the civilian facility shall be borne by the Government subject to the charges provided in § 70.5–6, but not after the date on which feasible arrangements for transfer have been made.

(2) Additionally, a dependent wife who is eligible for civilian medical care (see § 70.1–3(e)), whose husband dies while on active duty, who is pregnant at the time of his death and is delivered on or after July 28, 1959, may be provided from civilian sources at Government expense the obstetrical and maternity care authorized under this part to include, where applicable, prenatal care, delivery, and postpartum care. Neonatal care authorized elsewhere in this part is authorized for a child born under these circumstances. Care authorized in this subparagraph includes authorized prenatal care obtained before, on, or after July 28, 1959 and authorized postpartum care for the child. The restrictions on freedom of choice described in § 70.3–2 shall not apply to dependents covered in this § 70.5–5(e)(2).

§ 70.5–6 Charges.

(a) When the entire period of hospitalization has been in other than private accommodations, the patient shall pay to the hospital the greater of subparagraph (1) or (2) of this paragraph.

(1) The first twenty-five dollars ($25.00) of the expense incurred.

(2) An amount determined by multiplying the number of days of hospitalization by the per diem rate established in paragraph (a) of § 70.4–8.

(b) If hospital care in a private room is obtained by the patient because it is required for the proper care and treatment, and if the patient's attending physician so certifies, the amount of private room charges less the patient's payment set forth below will be paid by the Government. The patient will be required to pay to the hospital the greater of subparagraph (1) or (2) in addition to subparagraph (3) of this paragraph.

(1) The first twenty-five dollars ($25.00) of the expense incurred.

(2) An amount determined by multiplying the number of days of hospitalization by the per diem rate established in paragraph (a) of § 70.4–8.

(3) Twenty-five percent (25%) of the difference between private room charges and weighted average cost of semi-private room charges, when private room charges are more costly.

NOTE: For hospitals having only private rooms, the term "weighted average cost of semi-private room charges" is defined as 90 percent of the daily hospital charges for the room furnished the dependent or $15.00 per day, whichever is lesser.

(c) If hospital care in a private room is provided at the specific request or desire of the patient or of the sponsor, the patient will be required to pay to the hospital the greater of subparagraph (1) or (2), and in addition subparagraph (3) of this paragraph.

(1) The first twenty-five dollars ($25.00) of the expense incurred.

(2) An amount determined by multiplying the number of days of hospitalization by the established per diem rate.

(3) The difference between private room charges and weighted average cost of semi-private room charges, when private room charges are more costly.

(d) Except as provided in paragraph (b)(3) of this section, if hospital care in a private room is provided in a hospital which has only private rooms, the Government will pay 90 percent of the daily hospital charges for the room provided the dependent, or $15.00 per day, whichever is the lesser. The patient will be required to pay the hospital the greater of subparagraph (1) or (2), and in addition subparagraph (3) of this paragraph:

(1) The first twenty-five dollars ($25.00) of the expense incurred.

(2) An amount determined by multiplying the number of days of hospitalization by the established per diem rate. (See paragraph (a) of § 70.4–8.)

(3) Ten percent (10%) of the daily hospital charges for the private room provided the dependent or the total daily hospital charges for such room, less $15.00 per day, whichever is the greater.

(e) If while receiving authorized hospital care, private-duty nursing care is required for proper care and treatment, and if the patient's attending physician so certifies, 75 per cent of the charges in excess of $100.00 for such private-duty nursing care will be paid by the Government.

(f) All admissions to a hospital of an obstetrical patient as an inpatient for care required in direct connection with the pregnancy, including direct complications thereof, rendered during the period of pregnancy up to and including delivery and postpartum inpatient care following delivery, or immediate postpartum inpatient care for patients delivered outside the hospital, shall be considered as one admission for the purpose of determining charges to the dependent. Admission for a non-obstetrical diagnosis in the course of a pregnancy would require the patient to pay the charges for a separate admission. Patients who are delivered in a home or office shall pay the first $15.00 of charges in connection with the delivery, if not subsequently hospitalized.

(g) Patients who previously were admitted to a hospital for authorized care, who paid at least $25.00 of the hospital charges for that admission and who are readmitted to a civilian hospital within 14 days following discharge from the previous admission for authorized treatment of the original condition for which initially hospitallized, or direct complications thereof, will not be required to pay the first twenty-five dollars ($25.00) of subsequent hospitalizations, but will be required to pay an amount determined by multiplying the number of days of the current hospitalization by the established per diem rate (See paragraph (a) of § 70.4–8), plus any additional charges that might be specified elsewhere herein. Hospitals will be responsible for obtaining from the patient, physician, sponsor, or other hospital(s) satisfactory evidence that the patient is entitled to the lesser charge.

(h) When a patient who is in an inpatient status is transferred to another hospital to obtain as an inpatient necessary treatment not available in the first hospital and no break in hospitalization occurs except for time in transit, it shall be considered one admission for the purpose of payment of charges by the patient in accordance with this section.

(i) When a patient is treated for injury other than as an inpatient in a hospital in occordance with § 70.5–3(d)(3), the payments made shall be in accordance with the local schedules of allowances. Payments not to exceed a maximum of $75.00, except as provided for under § 70.5–3(d)(1)(v)(*d*), are also authorized for laboratory tests, pathology and radiology examinations provided they are procedures performed by or authorized by the attending physician or surgeon. Payment of charges is also authorized for use of hospital outpatient facilities required for the treatment of the injury, e.g., a cast room. The patient shall pay the first $15.00 of the physician's charges for each different cause or accident for which treatment and services are rendered, except that multiple injuries to the same person resulting from a single accident shall be considered as one injury for payment of the maximum required fee ($15.00) by the patient. The Government shall pay for all costs in excess of $15.00 as authorized in the local schedules of allowances. However, payment by the Government for laboratory tests and pathology and radiology examinations shall not exceed the $75.00 maximum except as provided for under § 70.5–3(d)(1)(v)(*d*).

§ 70.5–7 Administration.

(a) The Secretary of the Army, acting as Executive Agent for the Secretary of Defense, shall contract for medical care within the United States and Puerto Rico in accordance with the Armed Services Procurement Regulations with authority to redelegate such responsibilities within the Department of the Army. The Department of the Army personnel authorization and funds will be increased by the Office of the Secretary of Defense, upon justification, to provide for the personnel required for the dependent medical care program and to carry out the responsibilities of the Executive Agent. The Secretary of the Army shall be responsible for the provision of personnel, space, equipment, facilities and supplies, including related budgeting, funding, administrative control of funds, facility control, training, manpower control and utilization, personnel administration, security administration and other administrative provisions and services necessary to carry out assigned missions as Executive Agent. The Executive Agent's authority does not extend to the conduct of the medical care program in medical facilities of the uniformed services.

(b) The Executive Agent shall be responsible within the United States and Puerto Rico for the following:

(1) Preparation of the terms and placement of the contract or contracts to be established to include but not limited to:

(i) Local schedules of allowances to be used in full payment of bills presented by physicians and surgeons.

(ii) A provision for review and, if necessary, an adjustment of administrative payments not later than 120 days after the first year the plan or plans have been in effect and each year thereafter.

(iii) Determination of administrative responsibilities of the contractors and methods of determining administrative costs.

(iv) Adequate procedures for paying claims for authorized care provided to eligible dependents by physicians, treatment facilities, dentists, private-duty nurses, physical therapists and anesthetists.

NOTE: Claims may be paid under a contract or by appropriate arrangements such as direct billings between the Government and claimants. Detailed procedures may be covered in the Joint Regulations or in contracts.

(2) Administration of the contract:

(i) Liaison activities with the contractor.

(ii) Payment of bills.

(iii) The development of any budgetary information required by the uniformed services as prescribed by the Joint Regulations.

(iv) Audit.

(v) Preparation of such statistical information as may be necessary including that for the annual report of the Secretary of Defense to Congress.

(vi) The Executive Agent's responsibility shall not include as a matter of routine a detailed supervision of civilian medical procedures or a detailed inspection of civilian medical facilities.

(vii) The Executive Agent shall be responsible for the processing of complaints with reference to civilian medical care and hospitalization.

(viii) Contractors shall have detailed responsibility for resolving medical disputes through local grievance committees composed of civilian physicians.

(c) *Care in civilian facilities outside the United States and Puerto Rico.* The Secretary of a uniformed service is authorized, with authority to redelegate such responsibilities as appropriate, to contract or provide for payment for authorized civilian medical care for spouses and children outside the United States and Puerto Rico. (See § 70.3–4.) The responsibilities of the uniformed services, where appropriate, shall be the same as those listed for the Executive Agent in § 70.5–7(b).

(d) A Secretary of a uniformed service shall be responsible for the following:

(1) Initial eligiblty determinations and means of identification of the dependent for medical care as prescribed in §§ 70.2–1—70.2–2.

(2) Budgeting and funding for that portion of the total cost including administrative expenses which is properly attributable to his service.

(3) Reimbursement in accordance with cross-servicing agreements for care contracted by one service for dependents of another service. Any amounts received through such reimbursement shall be deposited to the credit of the appropriation supporting such contracts for medical care.

(4) Furnishing such information as required by the Executive Agent for the performance of his duties, including such data as the Executive Agent may require on dependent medical care from sources overseas other than uniformed services facilities.

§ 70.5–8 Hospitalization beyond period of 365 days.

When a spouse or child, who is a dependent, requires a period of hospitalization in excess of 365 days, the hospital shall notify the contractor who shall forward a copy of this notification to the Executive Agent or his representative. This notification normally will be submitted not later than 300 days after admission of the patient. Advance notice will permit arrangements to be made for proper transfer of the patient to a hospital of the uniformed service if this is determined to be feasible. Government transportation may be utilized to effect transfer to a uniformed services hospital. When transfer is not feasible, continuation of care in the civilian hospital at the expense of the Government may be authorized subject to the Joint Regulations.

§ 70.5–9 Government liability for payment of civilian medical care costs.

As prescribed in § 70.2, the uniformed services shall provide dependents with means of identification. When spouses and children of members of the uniformed services are provided civilian medical care, it is expected that the attending physician and medical facility will use reasonable care and precaution in identifying them. When medical care has been provided in good faith by the attending physician and medical facility and it is subsequently determined that the persons concerned were not in fact entitled to medical care at Government expense under Public Law 569, collection and other legal action shall be taken only against the sponsor or individual who was not entitled to the medical care. Where fraud is involved, the matter may be referred to the Attorney General of the United States with recommendation for prosecution. Notwithstanding the foregoing, the Government will be responsible for paying for care rendered to patients covered by § 70.5–5(c), only if the conditions set forth in that paragraph are met.

§ 70.5–10 Administration of changes to this part effective 1 January 1960.

(a) The changes to this part made effective on January 1, 1960 (referred to in this § 70.5–10 as the "effective date") restored certain types of care to the Medicare Program. On and after that date certain additional treatment specified in those charges constitutes authorized care which was not authorized on the preceding day. That additional treatment is referred to generally in this § 70.5–10 as care of a type restored to the Program. The following rules are promulgated governing administration of treatment of certain patients who commenced receiving that type of care before the effective date.

(1) *Hospitalized patients.* Where a patient is admitted to a hospital before the effective date for a type of care restored to the Program and is still in the hospital on that date receiving that care, payment may be made to the sources furnishing that care for the current uninterrupted period of hospitalization. Where a period of hospitalization commencing prior to that day is payable, then payment for pre- and post-hospitalization diagnostic tests and procedures which were considered necessary by the attending physician or dentist and were performed by or authorized by him are payable in accordance with § 70.5–3(d)(1)(v).

(2) *Outpatient injury cases.* Section 70.5–3(d)(3) covers care of this type that has been restored to the Program. Payment is authorized for care covered by that section furnished to a patient by an authorized civilian source only in those cases where the injury occurred prior to the effective date but subsequent to December 1, 1959 and where the patient is still under the care of a physician on or after the effective date, for the same injury, from the date of commencement of care. Payment is also authorized, in cases covered by the preceding sentence, for necessary laboratory tests, pathology and radiology examinations if the procedures are performed by or authorized by the attending physician or dentist (see §§ 70.5–3(d)(3) and 70.5–6(i)).

(b) Nothing in this § 70.5–10 shall waive the restrictions on freedom of choice set forth in § 70.3–2(e) nor the requirement for payment by the patient of the charges specified in § 70.5–6.

§ 70.6 Medical care in medical facilities not otherwise provided for.

(a) When dependents eligible for civilian medical care receive medical care authorized by this part, on an emergency basis, in a medical facility which is not included in the definition of a hospital as provided for in paragraph (a)(1) of § 70.5–3 or is not a uniformed services medical facility, the dependent will pay the charges listed in § 70.5–6 and the Government will pay the difference between the amount payable by the dependent and the reimbursable cost. Payments by the Government for such care rendered in Federal medical facilities other than those of a uniformed service will be on a reimbursable basis between the Executive Agent and the Department or agency concerned. This paragraph does not apply to paragraph (c) of this section.

(b) When dependents receive medical care authorized by this part in the governmental facilities of a foreign government (not civilian), the dependent will pay the charges listed in § 70.5–6 and the difference between the total cost and the amount paid by the dependent will be paid by the United States Government. In instances where a reciprocal agreement between a foreign government and the United States is in effect, which provides for no charge or a lesser charge to the dependent than those listed in § 70.5–6, such charges, if any, under the reciprocal agreement shall prevail.

(c) This part does not affect dependents' medical care furnished under the provisions of section 105 of Public Law 153, 83rd Congress, as amended by section 107 of Public Law 453, 83rd Congress, which authorizes medical and dental care for eligible dependents of military personnel in Canal Zone Government medical facilities.

§ 70.7 Medical care for members of the uniformed services.

Persons in the uniformed services on active duty or active duty for training are entitled to and shall be provided medical and dental care and adjuncts thereto. Under ordinary circumstances such members will receive medical care at the medical facility of the uniformed service which serves the organization to which the member is assigned. A member who is away from his duty station or is on duty where there is no medical facility of his own service available, may receive care at the nearest available medical facility of the uniformed services. Commissioned officers and warrant officers on active duty or active duty for training shall pay an amount equal to the portion of the charge established under paragraph (a) of § 70.4–8 that is attributable to subsistence when hospitalized in a medical facility of the uniformed

services. Nothing in this part shall affect the existing provision for providing medical care to members of the uniformed services through civilian or other sources.

§ 70.8 Medical care for retired members of the uniformed services.

§ 70.8–1 Retired members eligible for care.

Retired members shall be furnished required medical and dental care and adjuncts thereto to the same extent as provided for active duty members in any medical facility of a uniformed service, subject to mission requirements and the availability of space, facilities and capabilities of the medical staff as determined by the cognizant medical authority in charge of the medical facility. Nothing in this part is intended to change or modify the provisions of Executive Order 10122, 14 April 1950, as amended by Executive Order 10400, 27 September 1952.

§ 70.8–2 Ration allowance for retired enlisted members.

Retired enlisted personnel, including members of the Fleet Reserve, and the Fleet Marine Corps Reserve, shall not be charged for subsistence when hospitalized in a medical facility of a uniformed service.

§ 70.8–3 Charges for officers' subsistence.

Retired commissioned officers and retired warrant officers shall pay an amount equal to the portion of the charge established under paragraph (a) of § 70.4–8 that is attributable to subsistence when hospitalized in a medical facility of the uniformed services.

§ 70.9 Budgeting and accounting for medical and dental care furnished in facilities of the uniformed services.

The Secretaries of the uniformed services shall budget for supporting the maintenance and operation and/or subsistence of their service medical facilities for the medical and dental care of their members, retired members and dependents furnished in the medical facilities of their respective service. The Secretaries of the uniformed services shall also budget for reimbursement for the medical and dental care of their members, retired members and dependents receiving inpatient care in facilities of another uniformed service. Reimbursement shall be made between departments (Army, Navy, Air Force, and United States Public Health Service) for inpatient care furnished by one service for members, retired members, and dependents of another service at rates to be prescribed by the Bureau of the Budget to reflect the average cost of providing such care. Any amounts received through reimbursements or through local collection for subsistence and/or medical care in facilities of the uniformed services shall be deposited to the credit of the appropriation(s) supporting the operation and maintenance of the service medical facility furnishing care.

§ 70.10 Implementation.

Joint implementation in accordance with this part, covering care of dependents, shall be accomplished as appropriate by the uniformed services.

§ 70.11 Effective date.

This part is effective for planning purposes immediately and for implementation on 7 December 1956.

PART 74—APPOINTMENT OF DOCTORS OF OSTEOPATHY AS MEDICAL OFFICERS

Sec.
74.1 Purpose.
74.2 Policy.

AUTHORITY: §§ 74.1 and 74.2 issued under 10 U.S.C. 3294, 5574, 8294.

§ 74.1 Purpose.

The purpose of this part is to implement the provisions of Public Law 763, 84th Congress (70 Stat. 608), relating to the appointment of doctors of osteopathy as medical officers.

§ 74.2 Policy.

In the interest of obtaining maximum uniformity, the following criteria are established for the appointment of doctors of osteopathy as medical officers:

(a) To be eligible for appointment as Medical Corps officers in the Army and Navy or designated as medical officers in the Air Force, a doctor of osteopathy must:

(1) Be a citizen of the United States;

(2) Be a graduate of a college of osteopathy whose graduates are eligible for licensure to practice medicine or surgery in a majority of the States, and be licensed to practice medicine, surgery, or osteopathy in one of the States or Territories of the United States or in the District of Columbia;

(3) Possess such qualifications as the Secretary concerned may prescribe for his service, after considering the recommendations for such appointment by the Surgeon General of the Army or the Air Force or the Chief of the Bureau of Medicine and Surgery of the Navy;

(4) Have completed a minimum of (3) years college work prior to entrance into a college of osteopathy;

(5) Have completed a four-year course with a degree of Doctor of Osteopathy from a school of osteopathy approved by the American Osteopathic Association; and

(6) Have had subsequent to graduation from an approved school of osteopathy 12 months or more of intern or residency training approved by the American Osteopathic Association.

PART 77—MORTGAGE INSURANCE FOR SERVICEMEN TO AID IN CONSTRUCTION OR PURCHASE OF HOMES

Sec.
77.1 Purpose.
77.2 Definitions.
77.3 Policy.
77.4 Forms.

AUTHORITY: §§ 77.1 to 77.4 issued under sec. 222, 68 Stat. 603; 12 U.S.C. 1715m.

§ 77.1 Purpose.

This part sets forth policy guidance to the military departments in implementation of section 124, 68 Stat. 590; to provide for the delegation of authority conferred upon the Secretary of Defense by said law to issue certificates of eligibility and to prescribe other necessary instructions.

§ 77.2 Definitions.

The following definitions are applicable:

(a) "Serviceman" means a person to whom the Secretary of Defense or his designee has issued a certificate of eligibility indicating that such person is serving on active duty in the Armed Forces of the United States and has so served for a period of more than two years and requires housing. A person ordered to active duty for training purposes only is not an eligible serviceman.

(b) "Period of ownership by serviceman" as defined by the FHA means that period of eligibility during which the military service concerned is required to pay the mortgage insurance premiums to the Federal Housing Administration. For purposes of administration by the Department of Defense this period shall commence with the date the FHA endorses a loan for mortgage insurance hereunder and shall terminate when the Secretary of Defense or his designee furnishes the Commissioner of the FHA with certification that the service concerned will no longer be liable for the mortgage insurance premiums by reason of the death, discharge or separation from active duty (except when reenlisted the next day), termination of ownership of the property covered by such loan or other termination of eligibility by the serviceman, or at the request of the serviceman.

(c) "Housing" as used herein means a dwelling unit designed for a one family residence for occupancy by the serviceman as his home.

(d) "FHA" as used herein means the Federal Housing Administration.

§ 77.3 Policy.

(a) It is the policy of the Department of Defense that the servicemen's home loan provisions of 68 Stat. 590 shall be made available to members of the armed forces eligible therefor.

(b) The respective military services will issue a certificate of eligibility to any member of the armed forces currently serving on active duty who has served for more than two years, and who certifies that he requires housing. No certificate may be issued to an individual called to active duty for training purposes only. A further certificate may be issued when the period of ownership has terminated, a serviceman surrenders an expired certificate of eligibility or when he certifies an unused or expired certificate has been lost or destroyed.

(c) Where mortgage insurance premiums are currently being paid by a military service on a serviceman's loan, an additional certificate will not be issued.

(d) If a serviceman has acquired a loan under the terms of this part, he may be issued, subject to paragraph (c) of this section, an additional certificate of eligibility only in those instances where, as a result of military orders or situations of an emergent nature, the denial of such certificate would cause hardship or an inequity to the serviceman as determined by the Secretary of the military department concerned.

(e) Payments for all mortgage insurance premiums on loans will be made by a designated activity of the military departments following receipt of vouchers forwarded directly to it by the Federal Housing Administration.

(f) The purchase of property by a serviceman receiving a certificate of eligibility under this part will be governed by applicable FHA regulations.

(g) The authority vested in the Secretary of Defense under section 124, 68 Stat. 590 to issue certificates of eligibility and termination of eligibility is hereby delegated to the Secretaries of the Army, Navy and Air Force for their respective departments and to Commanders of echelons within each of the services where personnel records are maintained.

§ 77.4 Forms.

(a) DD Form 802,[1] Request for and Certificate of Eligibility, will be used to make a request for Certificate of Eligibility, Certification by the Military Service and recording of the FHA action as to indorsement or rejection.

(b) DD Form 803, Certificate of Termination, will be used by the military services for the purpose of notifying FHA of termination of ownership.

[1] This form has been filed with the Federal Register Division. Copies are available through administrative channels of each of the military services.

PART 85—ADVANCE PAY FOR MILITARY PERSONNEL

Sec.
85.1 Purpose.
85.2 Policy.

AUTHORITY: §§ 85.1 and 85.2 issued under Act of October 5, 1949, ch. 600, 63 Stat. 703–704; 37 U.S.C. 310c, 310d.

§ 85.1 Purpose.

The purpose of this part is to provide for uniform implementation of 63 Stat. 703–704; 37 U.S.C. 310c, 310d within the Department of Defense. That law permits payment of up to three months' advance pay upon permanent change of station when needed to furnish temporary relief from extraordinary expenses incident to the move. It also permits payment of advance pay and allowances under those circumstances where pay and allowances cannot be disbursed regularly.

§ 85.2 Policy.

(a) Advance pay for permanent change of station:

(1) *Personnel eligible.* Upon permanent change of station if such change is not incident to separation from the service or trial by court-martial, commissioned and warrant officers and enlisted personnel may be paid, under existing law, an advance of pay, not to exceed three months' basic pay (less income tax withholdings, Soldiers Home and FICA tax deduction and scheduled liquidation of an indebtedness, including any unliquidated amount resulting from an advance made on a different set of permanent change of station orders. All known indebtedness that has not been scheduled for collection will be scheduled or taken into account prior to effecting an advance of pay.)

(i) Normally the amount of an advance shall be limited to one month's basic pay less the deductions set forth in this subparagraph.

(ii) All advances of pay to enlisted members shall be approved by the Commanding Officer, and this approval shall be indicated on the pay order. The pay order will also include a certificate stating that the enlisted member will have at least enough time left to serve on his current enlistment to completely repay the advance (i.e., if six months are allowed for repayment, the certificate will state that the enlisted member has at least six months to serve on his current enlistment beginning with the first of the month following the month in which the advance is made). Advances of pay should not be made to officers where it is apparent that the officer's tour of duty (obligated service) will terminate prior to completion of the scheduled repayment of the advance. Commanding Officer's approval is not required on advances of pay to commissioned or warrant officers

(2) *Temporary duty.* The fact that there may be temporary duty enroute to permanent change of station will not preclude the payment of an advance of pay if the person is otherwise eligible.

(3) *Time of payment.* The advance of pay may be made at any time after receipt of orders involving a permanent change of station, but may not be made later than thirty days after reporting to the new duty station. It may be made in one, two or three installments, and is in addition to any amount otherwise due on the day the advance is made.

(4) *Liquidation of advance.* (i) Normally the amount of each advance of pay shall be fully liquidated within a period of six months (starting on the first of the month following the month in which the advance was made). Liquidation of the second or third installment, if any, will start on the first of the month following the month in which the installment is received.

(ii) In certain exceptional cases, such as assignments to MAAG or Military Mission duty in foreign countries, which involve unusually large expenditures of funds, the Secretary of the Department concerned or his designated representative, may authorize liquidation of the advance in pay over a period of not to exceed 12 months. Such cases must be fully justified by compelling reasons of hardship which would be caused if the repayment period were shorter.

(iii) An advance of pay will not be made in an amount which will require the stoppage of insurance allotments or class Q allotments. No allotment, other than a class Q allotment, will be established after the advance is made if it will prevent liquidation within the allowed period.

(iv) In the event a member is to be separated from the service prior to the expiration of the liquidation period, the liquidation of the advance will be accelerated by stopping payment of all allotments (except class Q allotments) to the extent necessary to liquidate the advance. However, class Q allotments shall be modified to the extent necessary, but not to an amount less than the basic allowance for quarters, to permit liquidation of the advance prior to discharge.

(b) Advance pay and allowances for duty at a distant station:

(1) *Personnel eligible.* Any member of the Armed Services, when ordered to duty at a distant station where pay and allowances cannot be disbursed regularly, may be paid an advance of basic pay and allowances normally not to exceed three months' basic pay and allowances (less income tax withholdings, Soldiers Home and FICA tax deductions, scheduled liquidation of indebtedness to the Government, and the total of all allotments in force.)

(2) *Procedure.* (i) Requests for such advance payments of pay and allowances for both officers and enlisted members shall be approved by the Commanding Officer. The Commanding Officer will take into consideration the lack of regularity of disbursements, and will approve only such payments as may be necessary to alleviate hardship caused by lack of regular disbursements.

(ii) Requests for authority to make payments in excess of three months' basic pay and allowances for duty at distant stations will be submitted by the Commanding Officer to the officer designated in the regulations of the Service concerned for approval.

(3) *Liquidation of advance pay and allowances.* The amount of pay and allowances advanced to members under the provisions of this paragraph shall be liquidated in full before any subsequent payment is made. (However, as an exception, liquidation on installment in accordance with an approved schedule is authorized when the distant duty is terminated earlier than anticipated, and the Secretary of the Department concerned, or his authorized representative, determines that installment liquidation is justified to prevent hardship. The approved schedule will take into consideration the end of enlistment or separation date of the member concerned.)

(c) Recording payment and liquidation of advances: Payments and liquidation of advances of pay or pay and allowances shall be recorded in members' pay accounts in accordance with the procedures prescribed by the Service concerned.

(d) Death or separation: In the event the member dies or is separated from the service before expiration of the allowed liquidation period, any unpaid pay and allowances which the member may have been entitled to on the date of death or separation will be used in the liquidation of the advance.

(e) A member will not be entitled to both an advance of pay for permanent change of station and an advance of pay and allowances for duty at a distant station when both advances are based on the same set of orders.

PART 87—DROPPING RETIRED MILITARY PERSONNEL FROM THE ROLLS OF THE ARMED FORCES

Sec.
87.1 Purpose.
87.2 Scope.
87.3 Policy.
87.4 Action.

AUTHORITY: §§ 87.1 to 87.4 issued under sec. 161, R.S., 5 U.S.C. 22; sec. 8, 68 Stat. 1145, 5 U.S.C. 2287. Interpret or apply secs. 1161(b), 1163(b), 6408(b) of 10 U.S.C.

§ 87.1 Purpose.

To prescribe a uniform policy governing the dropping from the rolls of the armed forces of members who are entitled to receive retired pay and who have been convicted by civil authorities.

§ 87.2 Scope.

This part applies only to members of the armed forces who are not on active duty and who are entitled to receive retired pay.

§ 87.3 Policy.

In view of the Act of August 25, 1958, Public Law 85–754 (72 Stat. 847; 10 U.S.C. 1161, note), by which Congress restored the retired pay of certain members who were dropped from the rolls of the armed forces for conviction by civil authorities, it is the policy of the Department of Defense that members of the armed forces who are entitled to receive retired pay may be dropped from the rolls of the armed forces for conviction by civil authorities only under section 8 of the Act of September 1, 1954, ch. 1214 (68 Stat. 1142; 5 U.S.C. 2281–2288); that is, when they are deprived of retired pay under that Act. This is in furtherance of the Department of Defense view that retired pay is earned and should be withheld only under extremely limited circumstances. In carrying out this policy, members shall be treated uniformly under substantially identical circumstances, regardless of their components.

§ 87.4 Action.

Recommendations for dropping members from the rolls of the armed forces in accordance with this Part shall be forwarded to the Secretary of Defense for transmission to the President in accordance with Department of Defense Instruction 1320.4, "Military Officer Actions Requiring Presidential or Congressional Approval".

PART 88—RECOUPMENT OF REENLISTMENT BONUS (MILITARY)

Sec.
88.1 Purpose
88.2 Policy.

AUTHORITY: §§ 88.1 and 88.2 issued under Pub. Law 217, 82d Congress (37 U.S.C. 238); Pub. Law 506, 83d Congress (37 U.S.C. 239)

§ 88.1 Purpose.

The purpose of this part is to furnish policy guidance to the Military Departments for conforming to the provisions of Public Law 217, 82d Congress, approved October 26, 1951, and Public Law 506, 83d Congress, approved July 16, 1954, as they relate to the recovery by the Government of portions of reenlistment bonuses in cases where the individual does not complete the term of enlistment for which the bonus was paid.

§ 88.2 Policy.

For the purpose of complying with the provisions of Public Law 217, 82d Congress and Public Law 506, 83d Congress, the following is submitted for guidance: (a) No individual shall be retained in the service beyond the date he would otherwise be discharged solely for the purpose of recoupment of reenlistment bonus, and (b) in applying the term "who voluntarily or as a result of his own misconduct" a pro rata portion of the reenlistment bonus shall be, upon the determination of the Secretary concerned, recovered for:

(1) *Separation by reason of transfer to the Fleet Reserve, Fleet Marine Corps Reserve, or Army or Air Force Reserve.* This item deals with only those cases where an individual is transferred to the Fleet Reserve, Fleet Marine Corps Reserve, or to the Army or Air Force Reserve and placed on the retired list of the Regular Army or Air Force. In the case of personnel so retired or transferred and retained on continuous active duty, such active duty shall be considered as a part of the enlistment being served in at the time of transfer and shall not be used in computing the pro rata share of the reenlistment bonus to be recouped. Retirement by reason of disability is not included under this section.

(2) *Separation for the purpose of reenlistment.* This entry concerns the following:

(i) Individuals granted discharges for the purpose of reenlistment for an unspecified period, and

(ii) Individuals granted discharges for the purpose of reenlistment for a specific reason, i.e., to attend a service school, to complete a tour of duty or for filling own vacancy.

(3) *Separation by reason of marriage.* This item concerns those enlisted women given discharges by reason of marriage.

(4) *Separation by reason of resignation.* This item concerns those individuals who are discharged by reason of acceptance of their resignations.

(5) *Separation as a result of Writ of Habeas Corpus.* This entry concerns those individuals who are discharged from the service as a result of their application, or an application submitted in their behalf, to the civil courts for a Writ of Habeas Corpus.

(6) *Separation by reason of reduction to permanent grade.* This entry concerns those individuals who are erroneously reenlisted in a higher temporary grade rather than in their permanent grade, and who elect discharge, or transfer to a reserve component if required by law, after being reduced to the lower grade and subsequently promoted to a temporary grade.

(7) *Separation by reason of disability resulting from misconduct, wilful neglect, or incurred during a period of unauthorized absence.* Included herein are those individuals discharged for disability as a result of the individual's intentional misconduct or wilful negligence or incurred during a period of unauthorized absence.

(8) *Separation by reason of a sentence of a court-martial.* This entry concerns those individuals discharged as a result of the approved sentences of courts-martial.

(9) *Separation by reason of unfitness or misconduct.* This provision concerns those individuals who are discharged administratively by reason of unfitness or misconduct as defined in section VII, Paragraphs I. and J. of DoD Directive 1332.14 (24 F.R. 1707, Part 41 of this Subchapter).

(10) *Separation by reason of disloyalty or subversive activities.* This provision concerns those individuals who are discharged administratively for disloyalty or subversive activities of the types set forth in section VIII, Para-

graphs C., 2 a through i, of DoD Directive 5210.9, "Military Personnel Security Program".

(11) *Separation directed by the Secretary of the Service concerned in individual cases.* This entry concerns those individuals whose discharge, or transfer to a reserve component, if required by law, is directed for the convenience of the Government by authority of the Secretary of the Service concerned, upon the application and in the interest of the individual, because of special or unusual circumstances, including discharges on account of erroneous enlistment for various reasons; to permit attendance at a civilian school; to permit enlistment in another service; and to permit enlistment of aliens in the armed forces of their native country.

PART 90—NATURALIZATION OF ALIEN SPOUSES AND/OR ALIEN ADOPTED CHILDREN OF MILITARY AND CIVILIAN PERSONNEL ORDERED OVERSEAS

Sec.
90.1 Purpose.
90.2 Applicability.
90.3 Policy.
90.4 Procedure.

AUTHORITY: §§ 90.2 to 90.4 issued under R.S. 161; 5 U.S.C. 22.

§ 90.1 Purpose.

The purpose of this part is to establish uniform procedure, acceptable to the Immigration and Naturalization Service of the Department of Justice, for military certification of alien dependents seeking naturalization under the Immigration and Nationality Act of 1952, sections 319(b), 320, 321, 323 (a), (b) and (c) (8 U.S.C. 1430(b), 1431, 1432, 1434).

§ 90.2 Applicability.

The provisions of this part are applicable to alien spouses and/or alien adopted children of military and civilian personnel of the Department of Defense who are authorized to accompany or join their sponsors overseas and who wish to obtain United States citizenship prior to departure.

§ 90.3 Policy.

(a) It is the policy of the Department of Defense that maximum assistance will be given by military installation commanders to alien dependents of personnel ordered overseas, to expedite their naturalization in order to accompany or join their sponsors when authorized to do so by regulation and approval of the oversea commander.

(b) It is further the policy of the Department of Defense that the certification as to dependents' authority to accompany or join their sponsors abroad, essential to the naturalization proceedings under the statutes cited in § 90.1, will be uniform for all Services and will be issued only at the times and in the manner described herein.

§ 90.4 Procedure.

The following procedure has been developed in conjunction with the Immigration and Naturalization Service, Department of Justice, to effect the timely and orderly processing of alien dependents eligible for naturalization under the statutes cited in § 90.1. Deviation from prescribed procedure, use of non-standard forms of certification, or failure to submit required documentation may result in delay in the attainment of citizenship prerequisite to the issuance of passport, which will in turn delay the dependents' overseas movement.

(a) Application for petition for naturalization will be made by the alien dependent on Immigration and Naturalization Form N–400 (adult) or N–402 (child), as applicable. These forms may be obtained from any office of the Immigration and Naturalization Service, or from any court having naturalization jurisdiction. The application may be filed when it is definitely established that the sponsor is being assigned overseas, or may be deferred until date of scheduled departure of the dependent is certified by the appropriate military commander (see paragraph (b) of this section).

(1) Application for petition for naturalization will be submitted to the nearest Immigration and Naturalization Service office and must be accompanied by:

(i) Three identical photographs.

(ii) Form FD 258, Fingerprint Card, bearing fingerprints of the applicant.

(2) No further action in naturalization proceedings can be taken until certification of the dependents' scheduled departure for overseas is made by the appropriate military commander.

(b) Certification of Dependents' authorization to Proceed Overseas: DD Form 1278,[1] "Certificate of Oversea Assignment to Support Application to File Petition for Naturalization", will be issued to alien dependents by military commanders at the times indicated below in order that the alien may file such certificate with the nearest Immigration and Naturalization Service office to initiate naturalization proceedings. Only DD Form 1278 will be accepted by the Immigration and Naturalization Service and military commanders will not issue memoranda or letters of any kind in lieu thereof.

(1) When dependents are authorized automatic concurrent travel, DD Form 1278 will be issued not earlier than 90 days prior to the scheduled date of travel of the individual.

[1] Filed as part of the original document.

(2) When advance application for concurrent travel is required, DD Form 1278 will be issued after approval is received and not earlier than 90 days prior to the scheduled date of departure of the individual.

(3) When concurrent travel is not authorized, DD Form 1278 will be issued after authorization for dependents' movement is received, and not earlier than 60 days prior to scheduled date of dependents' travel.

(c) Filing with Immigration and Naturalization Service: Upon receipt of DD Form 1278, the alien will file this form, together with the application for petition for naturalization, if not previously filed, with the nearest office of the Immigration and Naturalization Service. Further processing of the application for citizenship is as prescribed by the Immigration and Naturalization Service. Upon completion of the naturalization process, immediate application for passport should be made, in order that it can be issued prior to scheduled departure of the dependent for overseas.

PART 95—EXEMPTION OF CERTAIN PERSONNEL FROM OPERATION OF SECTIONS 281, 283, 284, 434 AND 1914 OF TITLE 18, UNITED STATES CODE

§ 95.1 Exemption of certain personnel from operation of sections 281, 283, 284, 434, and 1914 of Title 18, United States Code, and section 190 of the Revised Statutes.

Any person employed under the authority of section 704 of the Second Supplemental Appropriation Act, 1951, Public Law 911, 81st Congress, is hereby exempted, with respect to such employment, from the operation of sections 281, 283, 284, 434 and 1914 of Title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99), except as specified in the following paragraphs:

(a) Exemption hereunder shall not extend to the negotiation or execution, by an appointee under section 704, aforesaid, of Government contracts with the private employer of such appointee or with any corporation, joint stock company, association, firm, partnership or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest.

(b) Exemption hereunder shall not extend to making any recommendation or taking any action with respect to individual applications to the Government for relief or assistance, on appeal or otherwise, made by the private employer of the appointee or by any corporation, joint stock company, association, firm, partnership, or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest.

(c) Exemption hereunder shall not extend to the prosecution by the appointee, or participation by the appointee in any fashion in the prosecution, of any claims against the Government involving any matter concerning which the appointee had any responsibility during his employment under section 704, aforesaid, during the period of such employment and the further period of two years after the termination of such employment.

(d) Exemption hereunder shall not extend to the receipt or payment of salary in connection with the appointee's Government service under section 704 from any source other than the private employer of the appointee at the time of his appointment under section 704, aforesaid.

(e) Exemption from section 434 of Title 18, United States Code, shall not extend to persons appointed as experts or consultants under section 704 aforesaid.

(Sec. 704, 64 Stat. 1236; 5 U.S.C. 171v)

PART 101—PARTICIPATION IN RESERVE TRAINING PROGRAMS

Sec.
101.1 Purpose.
101.2 Applicability.
101.3 Reserve participation.
101.4 Compliance measure.
101.5 Cancellation of draft deferment.
101.6 Revocation of commission.

AUTHORITY: §§ 101.1 to 101.6 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply secs. 4, 6, 16, 62 Stat. 605, as amended, 609, as amended, 624, as amended, sec. 207, 72 Stat. 1428; 50 U.S.C. App. 454, 456, 466, 10 U.S.C. 270.

§ 101.1 Purpose.

The purpose of this part is to:

(a) Prescribe regulations providing specific exceptions to training requirements established by sec. 270 of 72 Stat. 1438, 10 U.S.C. 270.

(b) Prescribe regulations governing determination by the Secretaries of the military departments of:

(1) Failure to perform training duty satisfactorily, in connection with employment of the 45-day compliance measure under sec. 270 of 72 Stat. 1438, 10 U.S.C. 270.

(2) Satisfactory service required for deferment from induction for active training and service, under provisions of paragraph (2), subsection 4 (c) of 62 Stat. 606, 50 U. S. C. App. 454, of individuals who were reserve component members on June 25, 1950, and whose applications for two years of active duty have been denied.

(3) Satisfactory participation required for exemption from induction for active training and service, under provisions of paragraph (1) of subsection 6 (c) of 62 Stat. 610, 50 U. S. C. App. 456, of individuals who were members of organized units of the Reserve Forces on February 1, 1951.

(4) Satisfactory service required for deferment from induction for active training and service, under provisions of clause (C), paragraph (2), subsection 6 (c) of 62 Stat. 610, as amended, 50 U. S. C. App. 456, of individuals who enlist in organized units of the Reserve prior to attaining age 18½ years.

(5) Satisfactory performance of service for deferment from induction for active training and service, under provisions for paragraph (1), subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456, of graduates of ROTC or other officers' training programs who have undergone six months of active duty for training.

(6) Failure to perform satisfactory service, in connection with revocation of commissions of graduates of ROTC or other officers' training programs who have undergone six months of active duty for training, under provisions of paragraph (1), subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456.

(7) Satisfactory participation with respect to the identification of an "organized unit" as defined in subsection 16 (h) of 62 Stat. 625, 50 U. S. C. App. 466.

(c) Provide guidance to the Secretaries of the military departments in their determination of:

(1) Satisfactory service for deferment from induction for active training and service, under provisions of section 262 of 69 Stat. 600, 50 U. S. C. 1013, of individuals who enlist for eight years in the Reserve.

(2) Satisfactory service for deferment from induction for active training and service, under provisions of paragraph (2) of subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456, of individuals enlisted in the Reserve who thereafter are commissioned upon graduation from an Officers' Candidate School.

(3) Failure to perform satisfactory service, in connection with the revocation of commissions of Officers' Candidate School graduates, under provisions of paragraph (2) of subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456.

(d) Standardize procedures for the employment of compliance measures.

§ 101.2 Applicability.

The provisions of this part are applicable to all military departments in their implementation of the provisions of law cited in § 101.1.

§ 101.3 Reserve participation.

(a) Each individual inducted, enlisted or appointed in any armed force of the United States on and after August 10, 1955, who becomes a member of the Ready Reserve, other than by virtue of becoming a member of the National Guard of the United States or the Air National Guard of the United States, is required by sec. 270 of 72 Stat. 1438, 10 U.S.C. 270, during his statutory period in the Ready Reserve, to participate in "not less than 48 scheduled drills or training periods * * * and not more than 17 days of active duty for training during each year, or * * * annually not more than 30 days of active duty for training," except as specifically provided by regulations prescribed by the Secretary of Defense. Failure to perform such training duty satisfactorily in any year renders such an individual liable to be ordered without his consent to perform additional active duty for training for not more than 45 days. For the purpose of administering section 270 of 72 Stat. 1438, 10 U.S.C. 270, the terms "enlisted" or "appointed" refer to initial entry into an armed force through enlistment or appointment.

(b) Within the general policy that the number of drills and amount of annual training prescribed will be the minimum required to maintain the proficiency of the unit and the skill of the individual, the following exceptions are authorized for individuals subject to the training requirements of section 270 of 72 Stat. 1438, 10 U.S.C. 270:

(1) An individual who has performed active training and service may be placed in Training Category G (no training), as defined in DoD Directive 1215.6, subject: Uniform Training Categories and Pay Groups Within the Reserve Forces, dated 5 March 1956, when the Secretary of the military department concerned determines that, because of the mobilization requirements of the service concerned, the degree of skill acquired by the individual, or the civilian occupation of the individual, no training requirement exists.

(2) An individual in any training category other than Category G, as defined in Department of Defense Directive No. 1215.6, subject: Uniform Training Categories and Pay Groups Within the Reserve Forces, dated March 5, 1956, by reason of assignment to a unit, need not be required to participate in training additional to that prescribed for such training category. In assigning an individual to a particular training category, consideration may be given to personal circumstances to the degree that it is consistent with military requirements.

(3) An individual while participating in any officers' training program under provisions of paragraphs (1) and (2) of subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456, will not be required to participate in training additional to such officers' training program.

(4) Commissioned officer students of medicine or dentistry and practicing physicians or dentists may be permitted to participate to whatever lesser extent is considered by the military department concerned to be necessary to maintain military proficiency.

(c) Criteria established by the Secretaries of the military departments for determining satisfactory performance of training duty by individuals subject to the provisions of section 270 of 72 Stat. 1438, 10 U.S.C. 270, may include consideration of manner of performance of such training duty, but may not permit more than 10 per cent unexcused absence from scheduled drills or training periods. Failure to attend scheduled drills or training periods or annual active duty for training as the result of sickness, injury or emergency or other circumstances beyond the control of the individual, may be excused. For individuals subject to revocation of commission under provisions of paragraph (1), subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456, criteria for performance of satisfactory service shall be the same as that prescribed above for those subject to provisions of section 270 of 72 Stat. 1438, 10 U.S.C. 270. In the interest of uniformity, the same criteria should apply to individuals subject to revocation of commission under paragraph (2), subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456.

(d) Individuals exempt under provisions of paragraph (1), subsection 6 (c) of 62 Stat. 610, 50 U. S. C. App. 456, may continue to be so exempt by participation in the training program of an organized unit, as defined in subsection 16 (h) of 62 Stat. 625, 50 U. S. C. App. 466, in Training Categories A, B, C, or E, as defined in Department of Defense Directive 1215.6, subject: Uniform Training Categories and Pay Groups Within the Reserve Forces, dated March 5, 1956 in the degree of participation stated in paragraph (c) of this section.

(e) Individuals in order to continue in a draft-deferred status under the provisions of paragraph (2), subsection 4 (c) and paragraph (1), subsection 6 (d) of 62 Stat. 606, 611, 50 U. S. C. App. 454, 456, shall be required to meet the standards of satisfactory performance of training duty set forth in paragraph (c) of this section, or, as appropriate, participate satisfactorily in an officers' training

program as provided in paragraph (b) (3) of this section. However, membership of such individuals in the Standby Reserve as a result of the screening process prescribed in Part 53 of this subchapter will constitute satisfactory performance of service for continued deferment. In the interest of uniformity, standards for continued deferment under section 262 of 69 Stat. 600, 50 U. S. C. 1013, and paragraph (2) subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456, should be the same as those prescribed in this paragraph.

(f) Individuals in order to continue in a draft-deferred status under provisions of clause (C), paragraph (2), subsection 6 (c) of 62 Stat. 610, as amended, 50 U. S. C. App. 456, shall be required to meet the standards of satisfactory performance of training duty set forth in paragraph (c) of this section, or participate satisfactorily in an officers' training program as provided in paragraph (b) (3) of this section.

§ 101.4 Compliance measure.

Individuals subject to the participation requirements of section 270 of 72 Stat. 1438, 10 U.S.C. 270, except those enlisted in the Reserve under provisions of clause (C), paragraph (2), subsection 6 (c) of 62 Stat. 610, as amended, 50 U. S. C. App. 456, may for failure to perform training duty satisfactorily as defined above, be ordered to active duty for training for not more than 45 days. A member who fails to comply with orders to perform such active duty for training becomes liable to disciplinary action under the Uniform Code of Military Justice.

§ 101.5 Cancellation of draft deferment.

(a) Except for an individual enlisted under the provisions of clause (C), paragraph (2), of subsection 6(c) of 62 Stat. 610, as amended, 50 U.S.C. App. 456, no individual enlisted in the Reserve in a draft-deferred status should be certified to the Selective Service System for induction for two years active training and service unless application of the 45-day compliance measure has failed to induce satisfactory performance of training duty. No such individual will be so certified, however, until he has registered with Selective Service.

(b) The following individuals shall be reported to the local Selective Service Board for induction:

(1) Subject to considerations set forth in paragraph (a) of this section, persons enlisted in the Reserve under provisions of clause (C), paragraph (2), subsection 6 (c), of 62 Stat. 610, as amended, 50 U. S. C. App. 456, and section 262 of 69 Stat. 600, 50 U. S. C. 1013, who fail to serve satisfactorily.

(2) Individuals, who have been appointed as Reserve officers under subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456, and have not been required to perform active training and service, who fail to perform satisfactory service.

§ 101.6 Revocation of commission.

Revocation of commission under the provisions of subsection 6(d) of 62 Stat. 611, 50 U.S.C. App. 456, will be effected only after the individual concerned has been certified to Selective Service as provided in § 101.5(b)(2).

PART 105—RESERVE OFFICERS' TRAINING CORPS AND RELATED OFFICERS' TRAINING PROGRAMS

Sec.
105.1 Purpose.
105.2 Applicability.
105.3 General.
105.4 Commissioning of graduates.
105.5 Assignment of graduates.
105.6 Participation in Reserve training programs.

AUTHORITY: §§ 105.1 to 105.6 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply sec. 6, 62 Stat. 609, as amended; secs. 591, 593, 70A Stat. 24, 25; 50 U. S. C. App. 456, 10 U. S. C. 591, 593.

§ 105.1 Purpose.

The purpose of this part is to prescribe policies relating to the subject programs with respect to:

(a) Physical examination of enrollees.
(b) Commissioning of graduates.
(c) Assignment of graduates.

§ 105.2 Applicability.

This part applies to all military departments in the operation and administration of officers' training and procurement programs, within the purview of subsection 6(d)(1) of 62 Stat. 611, 50 U.S.C. App. 456.

§ 105.3 General.

(a) To reduce to an absolute minimum the loss at graduation of persons found physically disqualified for appointment as commissioned officers, thorough and complete physical examinations will be conducted at the time of, or immediately prior to:

(1) Enrollment in the Advanced Courses of Army and Air Force Reserve Officers' Training Corps programs. In addition, the military departments are urged to conduct physical examinations of enrollees in the Basic Courses of Army and Air Force Reserve Officers' Training Corps programs where entrants therein evidence an intention to pursue the Senior Division curricula to completion.

(2) Initial enrollment in all other applicable officers' training and procurement programs.

Such examinations will, in all respects, be equal to the examinations conducted to determine physical qualifications for appointment as commissioned officers. The physical standards applicable at the time of enrollment shall obtain at the time of graduation.

(b) Enrollees who acquire exemption or deferment from induction by virtue of their enrollment in subject programs shall be required to execute agreements as provided in subsection 6 (d) (1) of 62 Stat. 611, 50 U. S. C. App. 456. Enrollees other than those described above may be required to execute such agreements as may be prescribed by the Secretary of the military department concerned.

§ 105.4 Commissioning of graduates.

Upon the successful completion of the required course of instruction, a graduate of a program referred to in this part shall, if otherwise qualified, be appointed a Regular or Reserve Officer in the appropriate Armed Force. Such appointments shall be for an indefinite term.

§ 105.5 Assignment of graduates.

(a) Subject programs shall be operated with the greatest possible stability to produce officers to meet the approved mobilization requirements of the military departments.

(b) A graduate who has executed an agreement pursuant to § 105.3(b) shall:

(1) If his services are required at the time of his appointment, serve on active duty with the Armed Force in which appointed under the terms of his agreement.

(2) If not needed on active duty at the time of his appointment, be ordered to active duty for training for a period of six months with the Armed Force in which appointed.

(c) Graduates shall be called to active duty or active duty for training as soon as possible within a twelve-month period following their appointment as commissioned officers in accordance with the ability of the military departments to absorb them into units and training programs of the appropriate military services. Schedules for the calling of such graduates to active duty or active duty for training shall be prepared, and each graduate shall be advised at the time of his graduation as to the approximate date he will be required to report for such duty. During the period between appointment and the date of reporting for active duty or active duty for training, graduates shall be given appropriate Ready Reserve assignments.

(d) Graduates who have fulfilled their active military training and service obligation, or who have enlisted Reserve status and have performed six months active duty for training under the provisions of section 262, 69 Stat. 600, 50 U. S. C. 1013, or subsection 672 (d), 70A Stat. 28, 10 U. S. C. 672 (d), following their appointment as commissioned officers and in accordance with Service requirements, may:

(1) Be ordered to active duty or active duty for training per paragraph (c) of this section, pursuant to the terms of any agreements they have have entered into with the military departments concerned, or

(2) Be given appropriate Reserve assignments.

(e) Selection among graduates for assignment to active duty or active duty for training shall be made impartially by the Secretary of the military department concerned in accordance with the requirements of the respective military services. Maximum consideration shall be given to the preference of each individual. However, if it becomes necessary to select graduates for active duty from among those who preferred active duty for training, those with major academic specialties appearing below may be selected for active duty only if specific assignments utilizing such specialties exist, or if total active duty requirements cannot otherwise be met. The major academic specialties for which the special procedures described above are applicable are:

Chemistry.
Engineering (all branches).
Geology.
Geophysics.
Mathematics.
Microbiology.
Parasitology.
Pharmacology.
Physics.
Physiology (Medical).

(f) A graduate may be delayed from being ordered to active duty or active duty for training under regulations promulgated by the appropriate Secretary if he is the recipient of a scholarship, has been accepted by a recognized institution of higher education for graduate studies, would suffer undue personal hardship, or is otherwise precluded from reporting as ordered for cogent and acceptable reasons. If delayed, he shall remain subject to the assignment criteria prescribed above and shall be assigned to active duty or active duty for training, as appropriate, at such time as the cause of his delay ceases to exist.

§ 105.6 Participation in Reserve training programs.

Regulations governing participation in Reserve training programs and employment of compliance measures are prescribed in Part 101 of this subchapter.

PART 110—MILITARY COLLEGES IN THE RESERVE OFFICERS' TRAINING CORPS PROGRAMS; SUBSISTENCE AND UNIFORM COMMUTATION RATES FOR ENROLLED MEMBERS OF THE ROTC

Sec.
110.1 Purpose.
110.2 Applicability.
110.3 Policy.
110.4 Commutation rates.
110.5 Inspection.

AUTHORITY: §§ 110.1 to 110.5 issued under 10 U.S.C. 4386, 4387, 6901, 9386, 9387.

§ 110.1 Purpose.

The purpose of this part is to: (a) Define the classification of ROTC institutions; and (b) establish uniform rates for commutation in lieu of subsistence and uniforms for enrolled members of the Reserve Officers' Training Corps under the appropriate provisions of law (10 U.S.C. 4386, 4387, 6901, 9386, and 9387).

§ 110.2 Applicability.

The provisions of this part are applicable to the enrolled members of the Reserve Officers' Training Corps programs of all the military departments.

§ 110.3 Policy.

(a) *Classification of ROTC Units.* Senior division, military schools division, and junior division units are classified according to the type of institutions at which such units are established.

(1) *Senior Division.* The senior division units are classified as follows:

(i) *Class MC* (Military Colleges). For the purpose of qualifying as a military college within the meaning of subsection 6(a), Universal Military Training and Service Act, as amended: Units established in essentially military colleges or universities which confer baccalaureate or graduate degrees at which the average age of the students at the time of graduation is not less than 21 years; which require a course in military training throughout the undergraduate course for all qualified undergraduate students; which organize their military students as a Corps of Cadets under constantly maintained military discipline; which require all members of the Corps including those members enrolled in the ROTC to be habitually in uniform when on campus; which have as their objectives the development of the military students' character by means of military training and the regulation of their conduct in accordance with disciplinary principles; and which in general meet military standards similar to those maintained at the Service academies.

(ii) In the application of the above definition and criteria for the qualification of an institution as Class MC (Military College) the designation "all qualified undergraduate students" is defined as all physically fit male students except:

(*a*) Foreign nationals.

(*b*) Individuals who are not liable for induction by virtue of having honorably completed active training and service.

(*c*) Students who are pursuing special undergraduate courses in excess of four years after completion of the required military training.

(*d*) Certain categories of students who are specifically excused by (Board of Trustees) administrative decisions.

(iii) *Class CC.* ROTC units established at civilian colleges and universities which are not operated on an essentially military basis; which confer baccalaureate or graduate degrees; and at which the average age of the student at graduation is not less than 21 years.

(2) *Military Schools Division.* The military schools division is composed of units at designated schools which have been specifically authorized one of the following type units:

(i) *Class MJC.* Units established at essentially military schools which provide high school and junior college instruction but do not confer baccalaureate degrees. These units meet all other requirements of Class MC and accept and maintain the specially designated program of instruction prescribed by the appropriate Secretary for this class of institution.

(ii) *Class MI.* Units established at essentially military schools of secondary level of instruction which meet the military training requirements of Class MC or Class MJC and accept and maintain the specially designed program of instruction prescribed by the appropriate Secretary for this class of institution.

(3) *Junior Division.* The junior division units classified as Class HS are units established at high schools and

other educational institutions of comparable academic level which do not meet the requirements prescribed by any of the preceding classes.

(b) *Qualifying for Class MC special rate of commutation.* In order to qualify for the Class MC special rate of commutation in lieu of uniforms a designated military college must meet the following requirements in addition to those contained in paragraph (a)(1)(i) of this section.

(1) Organize and maintain within their undergraduate student bodies a self-contained Corps of Cadets in which not less than 300 male students are enrolled as members at all times throughout the academic year.

(2) Require all members of the Corps of Cadets to be in appropriate uniform at all times while on the campus.

(3) House all members of the Corps of Cadets in barracks separate from nonmembers of the Corps of Cadets.

(4) Require all members of the Corps of Cadets to be under constantly maintained military discipline on a 24-hour-per-day, 7-days-a-week basis.

(5) Require all physically qualified members of the above Corps of Cadets except foreign nationals, individuals who are not liable for induction by virtue of having honorably completed active training and service, or other individuals whose enrollment is precluded by provisions of appropriate regulations of the military departments to be enrolled in the basic course of ROTC. Further, to require such members of the Corps of Cadets upon completion of the basic course to apply, and if qualified and selected, to be enrolled in the advanced course at the proper time.

(6) Only those members of the Corps of Cadets meeting the requirements set forth in subparagraphs (1), (2), (3), (4), and (5) of this paragraph, who are enrolled in the basic and advanced course of the ROTC will be entitled to the special MC rate of commutation. Institutions designated as military colleges may enroll in the ROTC of the appropriate services those students who for various reasons are not required to be members of the Corps of Cadets. These institutions will receive, for such students, only the standard commutation rate prescribed annually for students in Class CC institutions.

§ 110.4 Commutation rates.

The commutation rates established below became effective July 1, 1956:

(a) *Subsistence.* A rate of 90 cents per day is established as the rate of commutation in lieu of subsistence for enrolled members of the:

(1) Advanced course, senior division, Army and Air Force ROTC or of the MST 5 and 6 course of the military schools division, Army ROTC.

(2) Contract Naval Reserve Officers' Training Corps program during their junior and senior years.

(b) *Uniforms.* The rates of commutation in lieu of uniforms are established as follows:

(1) $7 per year for a period not to exceed 3 years for each enrolled member of the junior division or of the MST 1 and 2 course of the military schools division, Army ROTC.

(2) $25 per year for a period not to exceed 2 years for each enrolled member of the basic course, senior division at Class CC institutions, Army and Air Force ROTC, or of the MST 3 and 4 course of the military schools division, Army ROTC.

(3) $50 per year for a period not to exceed 2 years for each enrolled member of the basic course, senior division, Army and Air Force ROTC at Class MC institutions.

(4) $100 covering a 2-year period for each enrolled member of the advanced course, senior division at Class CC institutions Army and Air Force ROTC or of the MST 5 and 6 course of the military schools division, Army ROTC.

(5) $200 covering a 2-year period for each enrolled member of the advanced course, senior division, Army and Air Force ROTC at Class MC institutions.

§ 110.5 Inspection.

An inspection system will be established to insure that ROTC units meet the prescribed standards for the award or retention of the Class MC classification and the special rate of commutation in lieu of uniforms. At institutions having both Army and Air Force units, a joint inspection will be held. Membership on the inspection team will be composed of equal ranks and numbers of Army and Air Force personnel, in addition to which each service will on alternate years provide a team chief. Inspections will be held within 30 days of the opening of the fall term of school. While final on-the-spot approval authority is vested in the team, disapprovals will be subject to review and resolution or confirmation by the services. The team may advise the institutional authorities of its findings at the conclusion of the inspection. In instances of disapproval the service review and final notification of the institution will be accomplished within the next 30 days.

PART 115—ASSIGNMENT TO AND TRANSFER BETWEEN RESERVE CATEGORIES, AND DISCHARGE FROM RESERVE STATUS

Sec.
115.1 Purpose.
115.2 Applicability.
115.3 Original assignment to Reserve status.
115.4 Transfer to the Standby Reserve.
115.5 Transfer from the Standby Reserve.
115.6 Discharge.

AUTHORITY: §§ 115.1 to 115.6 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply secs. 4, 6, 16, 62 Stat. 605, as amended, 609, as amended, 624, as amended, secs. 269, 1003, 1162, 1163, 70A Stat. 12, 79, 89; 50 U. S. C. App. 454, 456, 466, 10 U. S. C. 269, 1003, 1162, 1163.

§ 115.1 Purpose.

The purpose of this part is to establish policy guidance for assignment to and transfer between reserve categories, and discharge from reserve status.

§ 115.2 Applicability.

This part is applicable to all military departments

§ 115.3 Original assignment to Reserve status.

(a) *Ready Reserve.* Original membership in the Ready Reserve may be attained by:

(1) Transfer thereto under the provisions of paragraph (3), subsection 4 (d) of 62 Stat. 607, 50 U. S. C. App. 454, and sec. 269 (a), 70A Stat. 12, 10 U. S. C. 269 (a), upon release from active duty;

(2) Appointment as a Reserve Officer and assignment to the Ready Reserve under provisions of subsection 6 (d), 62 Stat. 611, 50 U. S. C. App. 456, and sec. 269 (a), 70A Stat. 12, 10 U. S. C. 269 (a);

(3) Entry (appointment or enlistment) into the National Guard of the United States or Air National Guard of the United States in accordance with provisions of sec. 269 (b), 70A Stat. 12, 10 U. S. C. 269 (b), as affected by secs. 101, 3077 and 8077 thereof;

(4) Direct entry under the provisions of sections 261 and 262 of 69 Stat. 600, 50 U. S. C. 1012, 1013, or of clause (C), paragraph (2), subsection 6 (c) of 62 Stat. 610, as amended, 50 U. S. C. App. 456; or

(5) Direct voluntary entry (appointment or enlistment) of an individual into the Ready Reserve, other than as provided above.

(b) *Standby Reserve.* Direct assignment to the Standby Reserve without prior membership in the Ready Reserve may be attained:

(1) In accordance with the provisions of paragraph (3), subsection 4 (d) of 62 Stat. 607, as amended, 50 U. S. C. App. 454, and paragraph (1) of subsection 269 (e), 70A Stat. 12, 10 U. S. C. 269, upon release from five or more years of active training and service; or

(2) By direct voluntary entry of an individual not serving under a statutory obligation and not otherwise subject to military service.

(c) *Retired Reserve.* Direct assignment and transfer to the Retired Reserve may be accomplished under the provisions of Department of Defense Directive No. 1200.4, subject: The Retired Reserve of the Reserve Forces, dated December 20, 1957.

§ 115.4 Transfer to the Standby Reserve.

(a) Each individual who has served five or more years on active training and service in the Armed Forces of the United States but who has an unfulfilled portion of his total military obligation remaining upon release therefrom, shall, if otherwise qualified therefor and a suitable vacancy exists, be afforded the opportunity to execute a written request to be assigned to the Ready Reserve for a period of at least one year. If such opportunity is declined, the individual shall be placed in the Standby Reserve.

(b) Individuals enumerated below shall, if otherwise qualified therefor and a suitable vacancy exists, be afforded the opportunity to remain in the Ready Reserve for a period of at least one year. If such opportunity is declined, they shall be transferred to the Standby Reserve.

(1) Those who have served on active duty and participated satisfactorily in accredited training programs of the Ready Reserve for a combined total of five or more years;

(2) Those who have completed the periods of active duty and Ready Reserve participation prescribed in section 263 of 69 Stat. 602, 50 U. S. C. 1014;

(3) Those who qualify for such transfer under provisions of paragraphs (3) and (4) of subsection 269 (e), 70A Stat. 12, 10 U. S. C. 269, unless such transfer would render them liable to induction for active training and service.

(c) All voluntary agreements to be assigned to or remain in the Ready Reserve will provide that:

(1) The Reservist may be transferred to the Standby Reserve by the appropriate Secretary at any time for cogent reasons;

(2) Under provisions of subsection 269 (e), 70A Stat. 12, 10 U. S. C. 269, the individual waives his right to transfer to the Standby Reserve while serving under such agreement;

(3) The period of voluntary membership shall be of not less than one year's duration.

(d) Transfer to the Standby Reserve under the screening process prescribed in Part 125 of this subchapter of individuals otherwise subject to continued membership in the Ready Reserve will be accomplished under the authority of subsection 269 (f), 70A Stat. 13, 10 U. S. C. 269.

(e) Transfer to the Standby Reserve of members of the National Guard of the United States or Air National Guard of the United States will be subject to the provisions of subsection 269 (g), 70A Stat. 13, 10 U. S. C. 269.

(f) Assignment to the Inactive Status List of the Standby Reserve is governed by Department of Defense Directive No. 1200.2, subject: Inactive Status List of the Standby Reserve, dated June 25, 1959, and retention thereon by Department of Defense Directive No. 1235.1, subject: Policy on Direct Appointments and on Adjustments, at Time of Entry into Active Military Service, of Grades of Civilian Specialists in the Reserve Forces Who Are Not Otherwise Expressly Provided for by Law, dated July 11, 1955.

(g) Individuals may be voluntarily retained in or transferred to the Standby Reserve for periods beyond expiration of statutory obligation, under such directives as may be issued by the Secretaries of the military departments.

§ 115.5 Transfer from the Standby Reserve.

(a) Any member of the Standby Reserve who has not completed his obligated period of military service in the Ready Reserve may be transferred to the Ready Reserve whenever the reasons for his transfer to the Standby Reserve no longer exist, provided he is otherwise qualified and a requirement exists.

(b) Whenever persons with critical skills who performed active duty for training for six months pursuant to Executive Order No. 10650, Regulations Governing the Selection of Certain Persons who have Critical Skills for Enlistment in Units of the Ready Reserve of the Armed Forces, dated January 6, 1956, published at 21 F. R. 167 (3 CFR, 1956 Supp.), and were subsequently transferred to the Standby Reserve in accordance with the screening process prescribed in Part 125 of this subchapter, are no longer engaged in critical skills in critical defense supporting industries or research, the Selective Service System will notify the appropriate military department. Upon receipt of such notification, the military department shall transfer such person to the Ready Reserve if he is otherwise qualified and a requirement exists.

(c) A member of either the Standby Reserve or the Retired Reserve may upon his own request be transferred to the Ready Reserve if qualified and a requirement exists for him. Such voluntary transfer will be accomplished under authority of sec. 269 (d), 70A Stat. 12, 10 U. S. C. 269 (d), subject to provisions of § 115.4(c).

(d) In any case, where an individual is transferred from the Standby Reserve to the Ready Reserve or the Retired Reserve, notification thereof to the Selective Service System will be made by the military department concerned.

§ 115.6 Discharge.

(a) Enlisted members of the Ready Reserve or the Standby Reserve who have completed their statutory obligation or who are not subject to a military obligation will be discharged unless they voluntarily remain under conditions specified in paragraph (c) or (g) of § 115.4.

(b) Any person who while a member of a reserve component becomes a regular or duly ordained minister of religion shall be discharged from such reserve component upon request under authority of subsection 233 (h), 69 Stat. 599, 50 U. S. C. 961. The definition of regular or duly ordained minister of religion pro-

vided in subsection 16 (g) of 62 Stat. 624, 50 U. S. C. App. 466, shall be used in connection with this part.

(c) Those commissioned officers of the Reserve who have accepted indefinite appointments will not be subject to mandatory discharge upon completion of the statutory obligation.

(d) Discharge from the service obligation for hardship or other causes will be governed by pertinent provisions of Department of Defense Directive No. 1200.3, subject: Fulfilling the Military Service Obligation, dated May 23, 1958 (Part 50 of this subchapter).

(e) Discharge from the reserve components is governed by provisions of sections 1003, 1162, 1163, 70A Stat. 79, 89, 10 U. S. C. 1003, 1162, 1163.

(f) Upon the discharge of members of the Standby Reserve, due notification thereof will be made to the Selective Service System by the military department concerned.

PART 120—INTER-SERVICE TRANSFER OF RESERVE OFFICERS ON EXTENDED ACTIVE DUTY

Sec.
120.1 Purpose.
120.2 Applicability.
120.3 Policy.
120.4 Procedure.

AUTHORITY: §§ 120.1 to 120.4 issued under sec. 716, Title 10, United States Code.

§ 120.1 Purpose.

The purpose of this part is to establish the policies which will govern implementation of section 716, Title 10, United States Code, with respect to the transfer of Reserve commissioned officers on extended active duty between the Reserve components of the Army, Navy, Air Force and Marine Corps.

§ 120.2 Applicability.

(a) This part is applicable to officers on extended active duty holding Reserve commissions in the armed services, except officers of the medical services. The inter-service transfer of officers holding commissions in the medical services will continue to be accomplished under existing regulations, DoD Instruction 1205.1, "Implementation of the Universal Military Training and Service Act with Respect to Medical and Dental Registrants", Section XI.

(b) Policy and procedure for the transfer of Regular officers on extended active duty is contained in Part 56 of this subchapter.

(c) Transfer of officers of the Reserve components not on active duty (except officers of the medical services) will continue to be accomplished under applicable Service regulations for conditional resignation and appointment.

§ 120.3 Policy.

(a) It is the policy of the Department of Defense that an officer of any military service who is especially qualified to contribute to the success of an activity of another service will be given an opportunity to do so without interruption of his service career, by being transferred from one service and appointed in another.

(b) No officer will be so transferred without his consent, nor will an officer transferred from one service be appointed in another service with a higher rank or precedence than that he held on the date prior to his transfer.

(c) Transfers will be made only within authorized strength limitations for the active duty forces.

(d) While intended for use primarily in the technical fields to permit the full utilization of specialists, this authority to transfer between services is not restricted to technical specialists.

§ 120.4 Procedure.

(a) Request for transfer will normally be initiated by an appropriate agency of the military department desiring the services of an officer serving in another department, or by the officer himself.

(1) (i) If initiated by the officer himself, the requests will be forwarded through military channels to the Secretary of the military department in which he is presently commissioned, and will be accompanied by a justification of the requested transfer as being in the interest of national defense and the individual officer.

(ii) The Secretary of the losing Department will forward the request to the Secretary of Defense through the Secretary of the gaining Department. Both Departmental Secretaries will indicate their concurrence or non-concurrence in the requested transfer.

(2) If initiated by other than the officer himself, request for transfer will be routed to the Secretary of Defense through the Secretaries of the gaining and losing Departments and will be accompanied by a statement that the officer concerned consents to the proposed transfer.

(b) The Secretary of Defense will approve such requested transfers as he considers in the best interests of the Department of Defense.

(c) Termination of presently held commissions and reappointment in another service will be accomplished by the two Services affected without interruption of the continuity of the officer's active duty.

(d) An officer transferred under the provisions of this part will be awarded a permanent reserve grade and date of rank as determined by applying the

amount of his promotion service to the appointment laws in effect for the Service to which he is being transferred. His temporary grade and date of rank will remain the same as that he held in his present Service on the day prior to his transfer.

(c) An officer transferred under provisions of this part will be credited with the unused leave with which he was credited at the time of transfer, and with the total military service with which he was credited on the date prior to his transfer.

PART 123—TRANSFER OF PERSONS BETWEEN RESERVE COMPONENTS OF THE ARMED FORCES

Sec.
123.1 Purpose.
123.2 Applicability.
123.3 Policy.

AUTHORITY: §§ 123.1 to 123.3 issued under sec. 512, 70A Stat. 18; 10 U.S.C. 512 and sec. 595, 70A Stat. 25; 10 U.S.C. 595.

§ 123.1 Purpose.

The purpose of this part is to establish a uniform policy governing interservice transfers of persons not on active duty who have an obligation for service under the provisions of the Universal Military Training and Service Act, as amended or the Armed Forces Reserve Act of 1952, as amended, between reserve components of the Armed Forces.

§ 123.2 Applicability.

This part is applicable to all military departments in the implementation of sections 512 and 595 of Title 10, U.S. Code.

§ 123.3 Policy.

(a) Interservice transfers of persons not on active duty who have an obligation for service under the provisions of the Universal Military Training and Service Act, as amended or the Armed Forces Reserve Act of 1952, as amended between reserve components of the Armed Forces may be accomplished only in cases wherein the reservist requests or consents to such transfer and wherein it is mutually agreed by the two Secretaries concerned that such transfers are in the best interest of the Armed Forces, except as provided in paragraph (b) of this section. An Armed Force may request the transfer of a particular reservist from a reserve component of another Armed Force. Such request will normally be made only when the initiating Armed Force has a specific vacancy for the individual concerned in an organized unit within a reasonable distance of the individual's domicile or place of business. It may be approved only when:

(1) The losing Armed Force has no organized unit within a reasonable distance of the domicile or place of business of the individual to which the reservist may be usefully assigned, or

(2) The reservist has special experience or professional, educational or technical background which is clearly of greater use to the gaining Armed Force and which use outweighs the value of his previous training in the losing Armed Force.

(b) At the time of enrollment in an officer candidate program of another service, an enlisted reservist will be transferred to the reserve component of the service conducting such program, provided that it is mutually agreed by the Secretaries concerned that such transfer is in the best interest of the Armed Forces.

(c) Interservice transfers between reserve components of the Armed Forces will be accomplished by discharge from the reserve component in which serving for the purpose of immediate enlistment or appointment in the reserve component of the Armed Force concerned. Where membership in the officer training program does not confer military status, discharge will be for the purpose of immediate enlistment in the reserve component of the gaining Armed Force. Discharge for this purpose shall not constitute a fulfillment of the military obligation. Additional service performed after such discharge will be counted toward fulfillment of such obligation.

PART 125—SCREENING THE READY RESERVE UNDER PROVISIONS OF THE ARMED FORCES RESERVE ACT OF 1952, AS AMENDED

Sec.

125.1 Purpose.
125.2 Policy.
125.3 Regulations for screening the Ready Reserve.
125.4 Ministerial students.
125.5 Persons who become liable for induction if screened into the Standby Reserve.
125.6 Reservists transferred to Standby Reserve.
125.7 Reports to the Secretary of Defense.
Appendix A—Standards and requirements applicable to Ready Reservists who are apprentices.
Appendix B—Standards and requirements applicable to Ready Reservists who are students.

AUTHORITY: §§ 125.1 to 125.7 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply sec. 208, 69 Stat. 598, 599; secs. 269, 273, 70A Stat. 12, 13; 50 U. S. C. 928, 10 U. S. C. 269, 273.

§ 125.1 Purpose.

The purpose of this part is to provide the Services with policy and regulations for screening the Ready Reserve.

§ 125.2 Policy.

(a) Each Service shall continuously screen its Ready Reserve in peacetime in order to provide a Ready Reserve composed of individuals (1) who meet Service standards of mental, moral, professional and physical fitness, and possess the required military qualifications in the various ranks, grades, ratings and specialties and (2) who are immediately available for military service during a national emergency without seriously impairing production and research vital to the national military effort, or activities necessary to the maintenance of the national health, safety or interest, or without creating extreme personal or community hardship.

(b) In selecting members of the Ready Reserve to be transferred to the Standby Reserve who are otherwise equally eligible for transfer under the criteria established in this part, the Service concerned shall accord preference for transfer in the following order: (1) Those who have participated in combat; and (2) those with the least remaining obligated service in the Ready Reserve.

§ 125.3 Regulations for screening the Ready Reserve.

Screening of the Ready Reserve shall be in accordance with the provisions of Executive Order 10651 (3 CFR, 1956 Supp.) and the following implementing instructions. Citations refer to specific paragraphs in the Executive Order. Persons who enter the Ready Reserve under the provisions of section 263(a) and 263(b) of the Armed Forces Reserve Act of 1952, as amended, shall not be eligible for transfer to the Standby Reserve under the provisions of paragraphs 4, 5, and 6 of the Executive Order.

(a) *Reference paragraph 2 (a) of Executive Order 10651; fulfilled Ready Reserve obligation.* Members of the Ready Reserve who have completed their ready reserve obligation will be transferred to the Standby Reserve as provided for by Department of Defense Directive 1205.6, (Part 115 of this subchapter) "Assignment to and Transfer between Reserve Categories, and Discharge from Reserve Status."

(b) *Reference paragraph 3 of Executive Order 10615; extreme hardship.* Positive action shall be taken to insure that all Ready Reservists are informed of the provisions of paragraph 3 of the Executive Order and the following implementing instructions relative to hardship:

(1) *Extreme personal hardship.* An individual desiring transfer from the Ready Reserve to the Standby Reserve must establish by documentary evidence that his dependents would, by his call to active duty in an emergency, suffer extreme hardship greater than that which dependents of other Reservists can be expected to experience from the Reservist's order to active duty. In order to insure a uniform standard, the criteria established by the Services should conform generally with current Selective Service regulations on extreme hardship deferment (see § 1622.30 (b) and (c) (1) of this title). In those cases where the reservist is registered with Selective Service, documentary evidence may include a recommendation by the State Director of Selective Service of the State in which the registrant's Local Board is located. Requests for consideration under this paragraph must be initiated by the Reservist or by his dependents.

(2) *Extreme community hardship.* An individual desiring transfer from the Ready Reserve to the Standby Reserve must establish by documentary evidence that his withdrawal from the community in a national emergency would have a substantial adverse effect on the health, safety or welfare of the community. In those cases where the reservist is registered with Selective Service, documentary evidence may include a recommendation by the State Director of Selective Service of the State in which the registrant's Local Board is located. Requests for consideration under this paragraph must be initiated by the Reservist.

(c) *Reference paragraph 4 of Executive Order 10651; critical military skills and critical civilian occupations*—(1) *Critical military skills.* (i) A critical military skill is one appearing on the List of Critical Military Skills for Use in Screening the Ready Reserve published by the Department of Defense. This list is subject to periodic revision.

(ii) The criteria used in establishing the List of Critical Military Skills are as follows:

(*a*) The military skill must be indispensable to the success of the Ready Reserve mobilization mission.

(*b*) A long period of mobilization-accelerated training in the Reservist's individual military specialty to include prerequisite specialty training (totalling at least 6 months) must be needed to develop the degree of skill required.

(*c*) An appreciable shortage (at least 10 percent of Ready Reserve requirements) of available personnel with the skill exists or is anticipated.

(iii) The Department of Defense list will be revised from time to time by the Assistant Secretary of Defense (Manpower, Personnel and Reserve), as necessitated by changes in the military missions and manpower requirements of the Services.

(iv) The Military Departments may furnish special justification for those skills which in their judgment should be included on the List of Critical Military Skills where manning circumstances justify a deviation from the above criteria.

(v) To the maximum extent possible, Services will utilize overages in critical military skills in one geographical area to meet the requirements for such skills in other areas.

[Subparagraph (1) amended, 23 F.R. 1725, Mar. 13, 1958]

(2) *Critical civilian occupations.* (i) The Department of Labor has issued a List of Critical Civilian Occupations for Screening the Ready Reserve. This list was developed by an Interagency Committee on which the Department of Defense is represented, and is subject to periodic revision.

(ii) To the extent that such assistance may be needed, authority is granted the Services to request the technical advice of the Department of Labor's affiliated State Employment Service Offices in classifying the civilian occupations of particular individual Reservists, other than Farm Operators and Assistants. There are some 1,700 full-time and 2,100 part-time Employment Service Offices located in communities throughout the country. The County Agricultural Stabilization and Conservation Committees of the Department of Agriculture may be used in a similar manner with respect to Farm Operators and Assistants. These committees, which exist in all agricultural counties in the country, generally have their headquarters in the county seats.

(3) *Utilization of volunteers with critical civilian occupations.* A Ready Reservist with a critical civilian occupation in excess of requirements in the Ready Reserve who has been selected for transfer to the Standby Reserve in accordance with paragraphs 4 and 7 of the Executive Order, and who then volunteers to remain in the Ready Reserve, under the provisions of Department of Defense Directive 1205.6 (Part 115 of this subchapter) dated January 16, 1956, "Assignment to and Transfer between Reserve Categories, and Discharge from Reserve Status", shall be given a military assignment utilizing his critical civilian occupation. If no military requirement exists for his critical civilian occupation and he possesses another critical military skill, he shall be utilized in that skill. If no requirement exists for him in a critical civilian occupation or in a critical military skill, he shall be utilized, insofar as possible, in a related military assignment.

(d) *Reference paragraph 5 of Executive Order 10651, apprentices and students.* Ready Reservists who are apprentices or students shall be transferred to the Standby Reserve in accordance with the following regulations except

that no person shall be transferred under this part who (1) has not had active training and service, (2) possesses a critical military skill, or (3) volunteers to remain in the Ready Reserve and executes a written agreement to remain in such Reserve for a minimum period of one year, as provided in Department of Defense Directive 1205.6, dated January 16, 1956, "Assignment to and Transfer between Reserve Categories, and Discharge from Reserve Status." (Part 115 of this subchapter.)

(1) *Apprentices.* Ready Reservists who are undergoing apprenticeship training in critical civilian occupations appearing in Department of Labor List of Critical Occupations for Screening the Ready Reserve, in such numbers as are in excess for such occupations, and who meet the standards and requirements described in Appendix A below shall be transferred to the Standby Reserve. At such time as the Reservist ceases to qualify for consideration as an apprentice under the regulations in this part, he should be considered for transfer to the Ready Reserve.

(2) *Students.* Ready Reservists who are students in colleges or universities pursuing studies that will qualify them for critical civilian occupations appearing in Department of Labor List of Critical Occupations for Screening the Ready Reserve and who meet the standards and requirements described in Appendix B below shall be transferred to the Standby Reserve. Excluded from consideration are those students enrolled or enlisted in programs leading to appointment to commissioned rank. At such time as the Reservist ceases to qualify for consideration as a student under the regulations in this part, he should be considered for transfer to the Ready Reserve.

§ 125.4 Ministerial students.

Any Ready Reservist who is preparing for the ministry in a recognized theological or divinity school shall be transferred to the Standby Reserve unless he executes a written agreement to remain in the Ready Reserve for a minimum of one year, as provided in Department of Defense Directive 1205.6, dated January 16, 1956, "Assignment to and Transfer between Reserve Categories, and Discharge from Reserve Status."

§ 125.5 Persons who become liable for induction if screened into the Standby Reserve.

Certain individuals covered by section 6(b)(2) and individuals covered by section 6(c)(1) of the Universal Military Training and Service Act are exempt from induction so long as they serve satisfactorily as members of organized units of the reserve. Similarly, persons covered by section 6 (c) (2) are deferred so long as they continue to serve satisfactorily as members of organized units of the reserve. Therefore, persons in these groups within the ages of Selective Service liability cannot be screened into the Standby Reserve without losing such exempt or deferred classification. Such persons who meet the criteria for transfer into the Standby Reserve shall be informed of the above facts and given ample opportunity to volunteer to remain in the Ready Reserve, if they are qualified.

§ 125.6 Reservists transferred to Standby Reserve.

Separate instructions govern the administrative actions involved in the transfer of individuals to the Standby Reserve. These instructions include the procedures which Selective Service and the Military Departments follow when Ready Reservists are transferred to the Standby Reserve. They also describe the type of information which will have to be forwarded by the Military Departments to Selective Service upon such transfer.

§ 125.7 Reports to the Secretary of Defense.

(a) In order that the Secretary of Defense may review progress of the screening of the Ready Reserve, and report to the President as required by paragraph 10 of Executive Order 10651 quarterly reports of the status of the initial screening operations will be required of each Service. The first quarterly report will be submitted on or before July 31, 1956, covering the period ending June 30, 1956. Annual status reports on the continuing screening operation will be required after January 1, 1958.

(b) In these reports, the following data will be provided for each critical civilian occupation:

(1) Service requirements for occupation.

(2) Current Service strength in occupation.

(3) If there are excesses in strength over requirements:

(i) The number actually transferred to the Standby Reserve.

(ii) The number not transferred because the possessors have other critical military skills.

(iii) The number of volunteers not transferred who are being used in non-critical military skills.

A Department of Defense Directive, to be published, will govern submission of such reports to the Secretary of Defense under assigned Report Control Symbol.

Appendix A—Standards and Requirements Applicable to Ready Reservists Who are Apprentices

I. The Reservist must have completed not less than 2,000 hours of apprenticeship training, exclusive of any training while in the military service, in an occupation appearing on the List of Critical Occupations for Screening the Ready Reserve.

II. The apprentice program must meet the following standards and requirements:

A. The apprentice training program must be an organized plan, written or implied, embodying the terms and conditions of employment, training and supervision of one or more apprentices in one or more apprenticeable occupations as defined in paragraph 1 below, and subscribed to by a sponsor who has undertaken to carry out the apprentice training program. The sponsor may be an employer of labor, a joint apprenticeship committee, a trade union, a group of employers of labor, or an association of journeymen.

1. The apprentice training programs must offer apprentice training in an occupation which:

a. Customarily has been learned in a practical way through training on-the-job;

b. Requires 4,000 or more hours of work experience to learn;

c. Is clearly identified and commonly recognized throughout the industry;

d. Requires during each year of apprenticeship the completion of 144 hours or more of organized and systematic related trade instruction designed to provide the apprentice with learning in theoretical and technical subjects related to the occupations;

e. Is not merely a part of an occupation normally learned through apprenticeship;

f. Involves a development of skill sufficiently broad to be applicable in like occupations throughout an industry rather than of restricted application to the products of one employer;

g. Does not fall within any of the following categories:

(i) Selling, retailing or similar occupations in the distributive field;

(ii) Managerial occupations;

(iii) Clerical occupations;

(iv) Professional or semi-professional occupations including occupations for which entrance requirements customarily include education of college level; or

(v) Agricultural occupations which include occupations such as the growing of crops, fruits or nuts, and the raising of livestock or poultry.

2. The apprentice training program must have been in operation with apprentices actually being trained therein for a period of at least one year.

III. Certification as to the apprenticeship status of the Reservist as well as the sufficiency of the program to meet the standards described above should be obtained by the Reservist from the sponsor of the program.

Appendix B—Standards and Requirements Applicable to Ready Reservists Who Are Students

I. The following criteria and standards will be applicable to those Ready Reservists pursuing academic studies that will qualify them for occupations appearing on the List of Critical Occupations for Screening the Ready Reserve:[1]

a. *Undergraduate students.* Students who are satisfactorily pursuing studies in their final year of undergraduate work at a college, university or similar school of learning and who are majoring in a field of study preparatory to entering a professional occupation appearing on the List of Critical Occupations for Screening the Ready Reserve, provided that during their last completed year of undergraduate work they achieved a scholastic standing which ranked them for that year within the upper three-fourths of the full-time male students for that year or have attained a score of 70 or more on the Selective Service College Qualification Test.

b. *First year graduate students.* Students who have been accepted for admission by a graduate school for the first class commencing after they have been accepted for a full-time course of instruction as a candidate for a graduate degree in a professional occupation appearing on the List of Critical Occupations for Screening the Ready Reserve, other than those covered under c. and e. below, and, if such class has commenced, have entered upon such course, provided that during their last full-time undergraduate year at a college, university or similar institution of learning, they achieved a scholastic standing on that year's work which ranked them for that year within the upper one-fourth of the full-time male students in their

[1] Except those enrolled or enlisted in programs leading to appointment to commissioned rank and those possessing critical military skills.

class or else attained a score of 80 or more on the Selective Service College Qualification Test, and provided that the graduate school has certified that they are currently meeting degree requirements and are expected to attain their degrees.

c. *First year students in professional schools of medicine, dentistry and allied health specialties.* Students who have been accepted for admission by a professional school of medicine, dentistry or allied health specialties appearing on the List of Critical Occupations for Screening the Ready Reserve for the first class commencing after they have been accepted and, if such class has commenced, have entered such school, provided that during their last full-time under-graduate year at a college, university or similar school of learning they achieved a scholastic standing on that year's work which ranked them for that year within the upper one-half of the full-time male students in their class or else attained a score of 70 or more on the Selective Service College Qualification Test, and provided that the school has certified that they are satisfactorily pursuing a full-time course of instruction leading to their graduation.

d. *Graduate students who have completed their first year of graduate school.* Students who have satisfactorily completed their first year in graduate schools and are satisfactorily pursuing full-time courses as a candidate for a graduate degree in a professional occupation appearing on the List of Critical Occupations for Screening the Ready Reserve, other than those covered under c. and e. herein. In general, requirements for the Master's degree should be completed in not more than two calendar years and for the Doctoral degree in not more than five calendar years of graduate study.

e. *Students who have completed their first year of study in professional schools of medicine, dentistry and allied health specialties.* Students who have satisfactorily completed their first year in a professional school of medicine, dentistry or allied health specialties appearing on the List of Critical Occupations for Screening the Ready Reserve and are satisfactorily pursuing full-time courses leading to their graduation.

II. Certification as to the student status of the Reservist, including his class standing as specified herein, should be obtained by the Reservist from appropriate college or university officials. Information on scores attained on the Selective Service College Qualification Test should be furnished by affidavit of the Reservist. It should be noted that only those Reservists who took the test prior to entering the Armed Forces will be eligible for transfer to the Standby Reserve on the basis of test scores. Persons are not eligible to take the test after they have completed their active military service obligation.

PART 127—ORDERING THE READY RESERVE TO ACTIVE DUTY IN A NATIONAL EMERGENCY DECLARED BY THE PRESIDENT

Sec.
127.1 Purpose.
127.2 Applicability.
127.3 Statutory provisions.
127.4 Policy.

AUTHORITY: §§ 127.1 to 127.4 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply sec. 2, 69 Stat. 599, sec. 673, 70A Stat. 28; 50 U. S. C. 961, 10 U. S. C. 673.

§ 127.1 Purpose.

The purpose of this part is to prescribe uniform policy governing the ordering to active duty of units and individuals in the Ready Reserve in a national emergency declared by the President.

§ 127.2 Applicability.

This part is applicable to all military departments in the employment of authority, contained in subsection 673(a), 70A Stat. as amended by subsection 2(f), 69 Stat. 599, to order to active duty in a national emergency declared by the President, units and individuals in the Ready Reserve.

§ 127.3 Statutory provisions.

(a) In time of national emergency declared by the President subsequent to January 1, 1953, or when otherwise authorized by law, subsection 673(a), 70A Stat. as amended by subsection 2(f), 69 Stat. 599, provides that any unit or any member not assigned to a unit organized to serve as such in the Ready Reserve may by authority designated by the Secretary concerned, be ordered to active duty for a period not to exceed 24 consecutive months, without the consent of the persons affected, except that numbers in excess of 1,000,000 may not be required to perform active duty involuntarily at any time unless authorized by the Congress.

(b) When the authority cited in paragraph (a) of this section is employed, subsection 673 (b), 70A Stat. requires that in the interest of fair treatment as between members in the Ready Reserve being considered for involuntary recall to duty, attention shall be given to the duration and nature of previous service with the objective of assuring such sharing of hazardous exposure as the national security and the military requirement will reasonably permit, to family responsibilities, and to employment found to be necessary to the maintenance of the national health, safety, or interest. At such time as the screening of the Ready Reserve under provisions of Part 125 of this chapter, becomes current, the requirements of cited subsection 673 (b), 70A Stat. will be considered as having been satisfied.

(c) In any expansion of the active Armed Forces of the United States which requires that units and members of the reserve components be ordered into the active military service of the United States, subsection 672 (c), 70A Stat. provides that, insofar as practicable, members of units organized and trained for the purpose of serving as such shall be ordered involuntarily to active duty only with their units, but does not prohibit the reassignment of personnel of such units after being ordered into the active military service of the United States. Policy governing application of this provision is contained in Department of Defense Directive Number 1235.6, subject: Integrity of Units, dated June 25, 1959.

§ 127.4 Policy.

(a) The authority contained in subsection 673(a), 70A Stat. to order units or members of the Ready Reserve involuntarily to active duty shall be exercised only on direction of the President.

(b) Where the nature of the emergency permits, the Secretary of Defense, with the advice of the Joint Chiefs of Staff, will determine the numbers and composition of forces to be ordered involuntarily to active duty from the Ready Reserve by each Service, subject to the conditions of paragraph (a) of this section within the 1,000,000 authorized by law or within whatever larger number may have been authorized by the Congress.

(c) Where the nature of the emergency precludes procedures contemplated in paragraph (b) of this section, the 1,000,000 members of the Ready Reserve authorized by law to be ordered involuntarily to active duty may be so ordered by authorities designated by the Secretaries concerned, subject to the conditions of paragraph (a) of this section, in numbers previously allocated to the military services by the Secretary of Defense.

(1) The Joint Chiefs of Staff shall be responsible for providing to the Secretary of Defense on a current basis the recommended numbers which each Service will be authorized to order involuntarily to active duty under such circumstances, based on appropriate war or mobilization plans.

(2) The Joint Chiefs of Staff shall periodically review the allocation made by the Secretary of Defense, for the purpose of recommending such changes as new conditions may dictate.

(d) Where the nature of the emergency indicates imminent attack upon the continental United States, those authorities having been designated by the Secretaries concerned may order to active duty, subject to the conditions of paragraph (a) of this section, those Ready Reserve forces previously determined by the Secretary of Defense, on the recommendation of the Joint Chiefs of Staff, as required for the immediate defense of the continental United States.

(e) The designation of individuals and units of the Ready Reserve to comprise the forces to be ordered involuntarily to active duty by each Service, within numbers determined by the Secretary of Defense in accordance with paragraphs (b), (c), or (d) of this section, shall be the responsibility of the Secretary of the military department concerned.

PART 132—RESERVE FORCES ACTIVE DUTY FOR TRAINING FOR BASIC TRAINING

Sec.
132.1 Purpose.
132.2 Applicability.
132.3 Policy.

AUTHORITY: §§ 132.1 to 132.3 issued under 62 Stat. 604, 50 app. U.S.C. 451, and 66 Stat. 431, 10 U.S.C 1a.

§ 132.1 Purpose.

The purpose of this part is to prescribe uniform policy:

(a) Governing active-duty-for-training programs established to provide basic training for persons enlisting directly into the Reserve Forces in draft-deferred status.

(b) Pertaining to certain aspects of programs for direct enlistment into the Reserve Forces.

§ 132.2 Applicability.

This Part is applicable to all military departments offering active duty for training for basic training to individuals without prior military service who enlist directly into the Reserve Forces under provisions of subsection 6(c)(2) of the Universal Military Training and Service Act, as amended, section 262 of the Armed Forces Reserve Act of 1952, as amended or Title 10, Title 32, and Title 50, United States Code. Active duty for training for basic training may include, in addition to recruit or basic individual training, basic unit training and various types of specialist training.

§ 132.3 Policy.

(a) The primary objective of the active-duty-for-training programs dealt with herein is to provide the Reserve Forces with trained young men.

(b) Except for the Alaskan Scouts and as provided in paragraph (c) of this section, the period of active duty for training for basic training shall be of six consecutive months duration.

(c) As approved by the Secretary of Defense, special programs of active duty for training for basic training of less than six months may be established to provide recruit training alone for individuals entering the Reserve Forces under provisions of subsection 6(c), paragraph (2), clause (A) of the Universal Military Training and Service Act, as amended. The period of active duty for training for basic training under such special programs, however, in addition to being less than six months shall also be of less than three consecutive months duration, including travel time.

(d) In the case of a military service accepting enlistments under authority of section 262 of the Armed Forces Reserve Act of 1952, as amended, or subsection 6(c), paragraph (2), clause (C) of the Universal Military Training and Service Act, as amended, the Department concerned shall submit its proposed annual enlistment quotas therefor with its annual manpower programs to the Secretary of Defense for approval.

(1) Approval by the Secretary of Defense will be on the advice of the Joint Chiefs of Staff, taking into consideration the need to maintain a military manpower pool of such size as to provide an adequate source of long-term volunteers for the Active Forces.

(2) Approved quotas for enlistments under section 262 of the Armed Forces Reserve Act of 1952, as amended, and for entry into active duty for training for basic training of persons enlisted under subsection 6(c), paragraph (2), clause (C) of the Universal Military Training and Service Act, as amended, shall be within the 250,000 annual maximum imposed by law.

(e) Irrespective of quotas allocated in accordance with paragraph (d) of this section, no enlistment shall be accepted under section 262 of the Armed Forces Reserve Act of 1952, as amended, if such enlistment would cause the strength of the Ready Reserve authorized for the component concerned to be exceeded. Subject to this limitation and to related Department of Defense policies and programs, such as Qualitative Distribution, enlistment of qualified individuals within quotas allocated shall be on a first-come-first-accepted basis.

(f) (1) Individuals entering the reserve components under programs requiring entry on active duty or active duty for training shall enter on either active duty or active duty for training with minimum practicable delay after enlistment. The delay shall not exceed 120 days, except those in the following category:

Individuals pursuing a course in high school may be delayed until they cease to pursue that course satisfactorily, graduate, or become 20 years of age, whichever occurs

first. However, no individual may be enlisted in any program requiring entry on active duty or active-duty-for-training if it appears that his entry on that duty will have to be delayed for more than one year because he is pursuing a course in high school.

Whether or not an individual shall or shall not participate and, if participating, whether he shall be in a paid or nonpaid status during the delay period will be as determined by the Departmental Secretary concerned.

(2) Individuals enlisted in the reserve components to pursue officers' training programs are exempt from this prescribed policy.

(g) In order to assure uniformity of training and discipline, all members of the Army National Guard or Air National Guard who volunteer for active duty for training for the purpose of basic training shall enter upon such training in Federal status.

(h) It is in the best interest of all the Services that a degree of uniformity and equity in reserve enlistment programs be maintained. Accordingly, proposed changes in existing reserve enlistment programs as well as proposed new programs will be submitted for approval prior to implementation. Proposals will include the division of the total obligation to be served on active duty or active duty for training in the Ready Reserve and in the Standby Reserve.

PART 136—MANAGEMENT AND MOBILIZATION OF THE STANDBY RESERVE

Sec.

136.1 Purpose.
136.2 Applicability.
136.3 Responsibilities for Management of the Standby Reserve.
136.4 Mobilization.
136.5 Addresses of State Directors, Selective Service System.

AUTHORITY: §§ 136.1 to 136.5 issued under RS 161; 5 U.S.C. 22. Interpret or apply sec. 672 of Title 10, U.S.C.

§ 136.1 Purpose.

The purpose of this part is to prescribe uniform policies with respect to management and mobilization of the Standby Reserve.

§ 136.2 Applicability.

This part is applicable to all military departments in exercising military control over persons transferred to the Standby Reserve and in calling members of the Standby Reserve to active duty pursuant to subsection 672(a) of Title 10, United States Code.

§ 136.3 Responsibilities for Management of the Standby Reserve.

(a) *Military departments.* The Secretaries of the military departments are responsible for:

(1) Exercising military control over members of the Standby Reserve.

(2) Maintaining such personnel records for members of the Standby Reserve as may be required by law and determined by the military departments to be necessary.

(3) Advising individuals who are transferred to the Standby Reserve of their duty to furnish local boards with information as prescribed by § 1690.10 of this title (Selective Service Regulations).

(4) Discharging members of the Standby Reserve in accordance with the provisions of § 115.6 of this chapter.

(5) Furnishing information promptly to the Selective Service System upon the assignment or transfer of a Reservist to or from the Standby Reserve and upon any change in military status of a member of the Standby Reserve.

(i) Upon the assignment or transfer of a Reservist to the Standby Reserve pursuant to the provisions of Part 125 or 115 of this chapter, the military department will complete DD Form 889[1] in accordance with the instructions printed thereon. If the Reservist concerned is a Selective Service registrant, the DD Form 889 will be sent to the State Director of the State in which the Reservist is registered. The appropriate State Director can be determined from the Selective Service number. The number is composed of four elements, the first of which is the State code. The key to State codes and the addresses of the various State Directors are shown in § 136.5. If the Reservist is not a registrant, the completed form will be sent to the State Director of the State in which the Reservist maintains his current mailing address.

(ii) Upon the transfer, discharge, or removal for any other reason of a Reservist from the Standby Reserve, the military department will promptly complete the left side of DD Form 889 and forward it to the same State Director to whom notification of the Reservist's entry into or membership in the Standby Reserve was previously addressed in accordance with subdivision (i) of this subparagraph.

(b) *Selective Service.* The Director of Selective Service is responsible by law for determining the availability of members of the Standby Reserve for involuntary order to active duty in time of war or national emergency declared by the Congress. To fulfill this statutory responsibility, the Director of Selective Service has prescribed that the Selective Service System will:

(1) Maintain current information pertaining to the civilian status of each member of the Standby Reserve.

(2) Determine, through local boards and appeals procedures of the Selective Service System, the availability of Standby Reservists for involuntary active duty. In making such determinations, local boards will be guided by Selective Service System policies which provide that:

(i) Consideration will be given to the military need for members of the

[1] Filed as part of original document.

Standby Reserve who have critical military occupations as well as to the need for critical civilian occupations in the supporting economy.

(ii) A Standby Reservist shall be declared nonavailable if continuance in his civil employment, occupation, activity, or other endeavors in time of war or national emergency declared by the Congress is found to be more essential to the maintenance of the national health, safety, welfare, or interest than the performance by him of active duty in the Armed Forces, or if it is determined that his performance of duty in the Armed Forces in time of war or national emergency declared by the Congress would result in extreme hardship or privation to his bona fide dependents.

(iii) The availability designation of a Standby Reservist is subject to periodic reevaluation and may be changed at any time such action would better serve the national interest.

(3) Furnish the military departments periodically with information concerning the Selective Service determination of availability of individual members of the Standby Reserve.

§ 136.4 Mobilization.

(a) *Availability of Standby Reservists for active duty.* In time of war or national emergency declared by Congress, or when otherwise authorized by law, Standby Reservists who have been found available by the Director of Selective Service may be involuntarily ordered to active duty by the military departments, provided it has been determined that there are not enough qualified members of the required category in the Ready Reserve.

(b) *Inactive Status List.* A Standby Reservist on the Inactive Status List who has been certified by the Director of Selective Service as being available for active duty will not be called into active military service without his consent unless the Secretary of the appropriate military department determines that adequate numbers of qualified members of the reserve components in an active status or in the inactive National Guard in the required category are not readily available. The provisions of DOD Directive No. 1235.1, Policy on Direct Appointments and on Adjustments, at Time of Entry into Active Military Service, of Grades of Civilian Specialists in the Reserve Forces Who Are Not Otherwise Expressly Provided for by Law, dated July 11, 1955, shall apply when Standby Reservists on the Inactive Status List are ordered to active duty.

(c) *Volunteers for active duty.* A member of the Standby Reserve who volunteers in writing for active duty shall be considered available for active duty and may be ordered into active military service by the appropriate military department pursuant to subsection 672(d), Title 10, United States Code. A determination of availability by the Director of Selective Service is not required and shall not apply in such cases. The appropriate State Director will be notified in such cases.

(d) *Nonavailable members of the Standby Reserve.* The Director of Selective Service has prescribed that members of the Standby Reserve who have been certified as not available for active duty shall be considered periodically to determine their availability to meet future requirements. Eighteen months after the initiation of general mobilization, the military departments shall review the cases of those Standby Reservists who have not been certified by the Director of Selective Service as available for active duty and, in the absence of cogent considerations to the contrary, shall separate such members from the Reserve.

§ 136.5 Addresses of State Directors, Selective Service System.

State Code No.	State	Region	Address
1	Alabama	III	149 Lee Street, Montgomery, Ala.
51	Alaska	VI	Post Office Box No. 2691, Juneau, Alaska.
2	Arizona	VI	Post Office Box No. 2831, Phoenix, Ariz.
3	Arkansas	IV	Third Floor, Old Post Office Building, Second and Center Streets, Little Rock, Ark.
4	California	VI	Old Post Office Building, 7th and K Streets, Sacramento 14, Calif.
56	Canal Zone	IV	Post Office Box No. 2014, Balboa Heights, Canal Zone.
5	Colorado	V	Double A Building, 1300 Glenarm Place, Denver, Colo.
6	Connecticut	I	Post Office Box No. 1558, Hartford, Conn.
7	Delaware	II	Post Office Box No. 1928, Wilmington, Del.
49	District of Columbia	II	451 Indiana Avenue NW., Washington 25, D.C.
8	Florida	III	310 Charlotte Street, St. Augustine, Fla.
9	Georgia	III	901 West Peachtree Street NE., Atlanta, Ga.
55	Guam	VI	Post Office Box No. 326, Agana, Guam.
52	Hawaii	VI	Post Office Box No. 4006, Honolulu 12, Hawaii.
10	Idaho	VI	Post Office Box No. 1997, Boise, Idaho.
11	Illinois	V	405 East Washington Street, Springfield, Ill.
12	Indiana	V	36 South Pennsylvania Street, Indianapolis 9, Ind.
13	Iowa	V	Building 68, Fort Des Moines, Iowa.
14	Kansas	V	Masonic Temple Building, 10th and Van Buren Streets, Topeka, Kans.
15	Kentucky	II	220 Steele Street, Frankfort, Ky.
16	Louisiana	IV	Building TB 309, Jackson Barracks, New Orleans 12, La.
17	Maine	I	4 Union Street, Augusta, Maine.
18	Maryland	II	Fifth Regiment Armory, Hoffman and Bolton Streets, Baltimore 1, Md.
19	Massachusetts	I	55 Tremont Street, Boston, Mass.
20	Michigan	V	Post Office Box No. 626, Lansing 3, Mich.
21	Minnesota	V	100 East 10th Street, St. Paul 2, Minn.
22	Mississippi	III	Cor. South State and Silas Brown Streets, Jackson, Miss.
23	Missouri	V	411 Madison Street, Jefferson City, Mo.
24	Montana	VI	Post Office Box No. 1183, Helena, Mont.
25	Nebraska	V	State Capitol, Lincoln 9, Nebr.
26	Nevada	VI	P.O. Box No. 644, Carson City, Nev.
27	New Hampshire	I	Post Office Box No. 427, Concord, N.H.
28	New Jersey	I	1006 Broad Street, Newark 2, N.J.
29	New Mexico	IV	Post Office Box No. 1018, Santa Fe, N. Mex.
30	New York	I	Old Post Office Building, Albany 1, N.Y.
50	New York City	I	11th Floor, 205 East 42d Street, New York 17, N.Y.
31	North Carolina	III	Post Office Box No. 9513, Morgan Street Station, Raleigh, N.C.
32	North Dakota	V	Post Office Box No. 628, Bismarck, N. Dak.
33	Ohio	II	110 West Long Street, Columbus 15, Ohio.
34	Oklahoma	IV	Bankers Security Life Building, 114 North Broadway, Oklahoma City 2, Okla.
35	Oregon	VI	Post Office Box No. 4288, Portland 8, Oreg.
36	Pennsylvania	II	Post Office Box No. 92, Harrisburg, Pa.
53	Puerto Rico	III	Post Office Box No. 4031, San Juan, Puerto Rico.
37	Rhode Island	I	1 Washington Avenue, Providence, R.I.
38	South Carolina	III	Post Office Box No. 869, Columbia, S.C.
39	South Dakota	V	Post Office Box No. 1872, Rapid City, S. Dak.
40	Tennessee	III	1317 Church Street, Nashville, Tenn.
41	Texas	IV	304 East 5th Street, Austin 14, Tex.
42	Utah	VI	Building No. 102, Fort Douglas, Utah.
43	Vermont	I	151 Main Street, Montpelier, Vt.
44	Virginia	II	900 North Lombardy Street, Richmond 20, Va.
54	Virgin Islands	III	Post Office Box No. 360, St. Thomas, Virgin Islands.
45	Washington	VI	State Armory, Tacoma 5, Wash.
46	West Virginia	II	Embleton Building, 922 Quarrier Street, Charleston 1, W. Va.
47	Wisconsin	V	1220 Capitol Court, Madison 5, Wis.
48	Wyoming	V	Post Office Box No. 498, Cheyenne, Wyo.

SUBCHAPTER C—REGULATIONS PERTAINING TO MILITARY JUSTICE

PART 150—UNIFORM RULES OF PROCEDURE FOR PROCEEDINGS IN AND BEFORE BOARDS OF REVIEW

DEFINITIONS

Sec.
150.0 Definitions.

RULES

150.1 Quorum.
150.2 Place for filing papers.
150.3 Signing of papers.
150.4 Computation of time.
150.5 Counsel.
150.6 Records of trial.
150.7 Assignment of errors.
150.8 Briefs.
150.9 Hearings.
150.10 Decisions of a board of review.
150.11 Continuances and interlocutory matters.
150.12 Reconsiderations.

APPENDIXES

150.21 Appendix 1—Form for assignment of errors.
150.22 Appendix 2—Form for cover page of brief.
150.23 Appendix 3—Form for contents of brief on behalf of accused.

AUTHORITY: §§ 150.0 to 150.23 issued under sec. 866, 70A Stat. 59; 10 U.S.C. 866.

DEFINITIONS

§ 150.0 Definitions.

So far as the terms defined in Article 1 of the Uniform Code of Military Justice are used in this part they are used in the sense of their respective definitions therein unless the context indicates otherwise. As used in this part:

(a) "Appellate counsel" shall mean any counsel representing any party before a board of review.

(b) "Appellate defense counsel" shall mean any officer appointed by the Judge Advocate General to represent an accused before a board of review pursuant to Article 70, Uniform Code of Military Justice.

(c) "Appellate Government counsel" shall mean any officer appointed by the Judge Advocate General to represent the Government before a board of review pursuant to Article 70, Uniform Code of Military Justice.

(d) "Civilian counsel" shall mean civilian counsel provided by the accused to represent him before a board of review.

(e) "Appellate counsel for the accused" shall be construed to include appellate defense counsel and civilian counsel.

(f) "Defense counsel" shall mean any person who represented an accused at the trial by court-martial or who served as his counsel in the field.

RULES

§ 150.1 Quorum.

A majority of the members of a board of review will constitute a quorum for the purpose of hearing and determining any matter referred to the board. The determination of any matter referred to a board of review will be according to the opinion of a majority of its members. In the absence of a quorum the senior member present may make all necessary orders touching any proceedings pending in the board preparatory to hearing or decision thereof.

§ 150.2 Place for filing papers.

When the filing of a notice of appearance, brief, or other paper in the Office of a Judge Advocate General is required by this part, such papers will be filed in the Office of the Judge Advocate General of the appropriate armed force. If transmitted by mail or other means, they are not filed until received in such office.

§ 150.3 Signing of papers.

All formal papers must be signed and must show, typewritten or printed, the name and address of the person signing same, together with his military rank, if any, and the capacity in which he signs the paper. Such signature constitutes a certificate that the statements made therein are true and correct to the best of the knowledge, information, and belief of the person signing the paper, and that the paper is filed in good faith and not for purposes of unnecessary delay. Papers will be filed only by the duly authorized counsel for the parties in interest and proof of such authorization may be required.

§ 150.4 Computation of time.

Times referred to in this part are calendar days. If the last day falls on a Saturday, Sunday, or holiday compliance may be made on the next working day.

§ 150.5 Counsel.

(a) *Qualifications.* In any proceeding before a board of review the accused may be represented by civilian counsel provided by him or by assigned appellate defense counsel. Civilian counsel must be a member in good standing of the bar of a Federal court or of a court of record of any State of the United States, and may be required to file a certificate setting forth such qualifications. Appellate defense and Government counsel will be qualified in accordance with Article 70(a) and 27(b)(1) of the Uniform Code of Military Justice.

(b) *Conduct of counsel.* The conduct of counsel appearing before a board of review will be in accordance with the rules of conduct prescribed by paragraph 42*b*, Manual for Courts-Martial, United States, 1951 (16 F. R. 1303).

(c) *Request for appellate defense counsel.* A request for representation by appellate defense counsel will be forwarded to the convening authority for attachment to the record or dispatched to the Office of the Judge Advocate General within ten days from the date of sentence. In cases referred to a board under Article 69, Uniform Code of Military Justice, the accused will have two days from the time he receives notice of such reference to forward a request for appellate defense counsel to the Office of the Judge Advocate General unless he has already forwarded such request. Any request for appellate defense counsel should be accompanied by a statement as to the errors or other matters urged as grounds for relief. Such statement need not be in technical form and the assistance of counsel in the field will be available for its preparation. In the event defense counsel files a brief as provided in Article 38 (c), Uniform Code of Military Justice, such brief may be submitted in lieu of this statement.

(d) *Civilian counsel provided by accused.* (1) Notice that an accused has retained or has taken action to retain civilian counsel to represent him before a board of review will be forwarded to the convening authority for attachment to the record or dispatched to the Judge Advocate General within ten days from the date of sentence. In cases referred to a board of review under Article 69, Uniform Code of Military Justice, the accused will forward such notice within two days after receipt of notice by him of such referral unless he has already forwarded such notice. The notice of representation by civilian counsel will be signed by the accused or his representative and will state the name and address of such civilian counsel. When the accused has forwarded a timely notice of intention to retain civilian counsel, a notice of retainer stating the name and address of such counsel must be received in the Office of the Judge Advocate General within ten days of receipt of the notice of intention. Such civilian counsel will thereafter be notified of the receipt of the record of trial in the Office of the Judge Advocate General, the number of the case, the board to which the case has been referred, and the arrangements made, or to be made, for a hearing.

(2) If the accused has forwarded a timely notice of intention to retain civilian counsel, appellate defense counsel shall be assigned to represent the interests of the accused pending appearance of civilian counsel.

(e) *Failure to request or give notice of appellate counsel.* Failure of an accused to request appellate defense counsel or to give notice of retainer of civilian counsel or of intention to retain civilian counsel within the times prescribed may be regarded as a waiver of such right and a board may take final action in the case. Upon application made to the Judge Advocate General at any time before the board of review has taken final action in a case, and for good cause shown, the times prescribed herein may be extended.

(f) *Mandatory assignment of appellate defense counsel.* In all cases in which the United States is represented by counsel before a board of review, the accused will be assigned appellate defense counsel if not already represented by counsel.

(g) *Direct communication.* Civilian counsel may communicate directly with appellate defense or Government counsel. Appellate defense counsel may render such appropriate assistance in connection with the appellate review of the case as may be requested by civilian counsel.

(h) *Notice of appearance of counsel.* Appellate defense and Government counsel in a case before a board of review will file a written notice of appearance in the Office of the Judge Advocate General within five days of assignment to the case. Civilian counsel will file such notice within ten days from the

date of receipt of the notice of retainer. Unless separate notice of appearance is filed, an assignment of errors, brief, or other formal paper will constitute a notice of appearance.

§ 150.6 Records of trial.

Civilian counsel who do not have a copy of the record of trial may make arrangements with appellate defense counsel to examine a copy of the record of trial in the Office of the Judge Advocate General and to make a copy of the whole or any part thereof without expense to the Government.

§ 150.7 Assignment of errors.

Within fifteen days after appellate defense counsel for the accused has been notified of the receipt of the record in the Office of the Judge Advocate General, appellate counsel for the accused shall file an assignment of errors setting forth separately and particularly each error asserted and intended to be urged (§ 150.21). An original and five clear copies, prepared in accordance with the provisions of § 150.8(a), will be submitted. It will contain the information prescribed in § 150.8(d)(1). A reply to this assignment may be filed within fifteen days. For good cause shown the Judge Advocate General may extend these times.

§ 150.8 Briefs.

(a) *General provisions.* The assignment of errors prescribed in § 150.7 may be included in, or filed in lieu of, a brief for the accused. An original and five clear copies of all briefs will be submitted. Briefs will be typewritten, double-spaced on 8" x 12½" (legal cap) white paper, securely fastened at the top. All references to matters contained in the record will show record page numbers and any exhibit designations.

(b) *Number of briefs.* Appellate counsel will be limited to the filing of one brief for each side unless the board otherwise permits or directs.

(c) *Time for filing.* Any brief for an accused will be filed within fifteen days after his appellate counsel has been notified of the receipt of the record in the Office of the Judge Advocate General. If the Judge Advocate General has directed appellate Government counsel to represent the United States, such counsel may file a brief on behalf of the Government within fifteen days after any brief or an assignment of errors has been filed on behalf of an accused. If no brief is filed on behalf of an accused, a brief on behalf of the Government may be filed within fifteen days after expiration of the time allowed for the filing of a brief on behalf of the accused. For good cause shown the Judge Advocate General may extend the times prescribed herein, giving due notice of such extension to the opposing party.

(d) *General contents.* (1) Each brief will indicate on the cover page (§ 150.22):

(i) The designation of the board of review to which the case has been referred,

(ii) The number of the case, if known, and the caption with designation of parties,

(iii) Title of the document,

(iv) Names and addresses of all counsel submitting the document.

(2) An index containing:

(i) Divisions of the brief, including a summary of the argument,

(ii) Table of authorities cited with references to the page of the brief where cited.

If the brief is less than ten pages long this index may be omitted.

(e) *Contents (Accused)* (§ 150.23). The brief for an accused will contain the following arranged in the order indicated:

(1) A summary of the proceedings showing the findings and sentence as approved and the action of the convening authority thereon;

(2) A concise statement of the facts of the case containing all that is material to the consideration of the questions presented with appropriate page references to the record;

(3) The substance of the errors or points intended to be urged, prepared in accordance with § 150.7:

(4) The argument exhibiting clearly the points of fact and law being presented, citing the authorities and statutes relied upon, and quoting the relevant parts of such authorities and statutes as are deemed to have an important bearing;

(5) A conclusion stating concisely why the case should be decided as urged.

(f) *Contents (Government).* (1) A brief on behalf of the Government will be of like character as that prescribed for the accused except that the matters prescribed in paragraph (e) (1), (2), and (3) of this section need not be given unless deemed necessary in correcting any inaccuracy or omission in the brief of the accused.

(2) Appropriate proof of service of a copy of the brief will appear on the cover sheet when the accused is represented by civilian counsel.

§ 150.9 Hearings.

(a) *Oral arguments.* Cases where the parties are not represented by counsel will be considered as submitted without oral argument. All other cases will be set for argument unless, upon request of counsel, a board permits a case to be submitted without argument. The accused does not have a right to be present at the hearing before the board of review.

(b) *Notice of setting of arguments.* A board of review will give appellate counsel at least ten days notice of the time and place of oral argument, unless waived.

(c) *Time limits.* The length of oral arguments will be within the discretion of a board of review and ordinarily will not exceed thirty minutes for each side.

(d) *Number of counsel; opening and closing.* A board in its discretion may limit the number of counsel making an oral argument. The defense will have the right to make opening and closing arguments.

(e) *Failure to appear.* Failure of appellate counsel to appear at the time and place set for oral argument may be regarded as a waiver thereof and the board may proceed to act on the case as submitted without argument or, in its discretion, may continue the case for argument at a later date, giving due notice thereof.

(f) *Matters outside record.* Matters outside the record of trial will not be presented to or argued before a board of review except with respect to:

(1) A petition for new trial referred to a board under Article 73, Uniform Code of Military Justice,

(2) A question of jurisdiction,

(3) Matters affecting the sanity of an accused tending to show that further inquiry as to his mental condition is warranted in the interest of justice,

(4) Matters as to which judicial notice may be taken in military law.

When requested by the Judge Advocate General, a board of review may hear and report to him on any matter outside the record in mitigation of the sentence, or otherwise in the interest of justice.

§ 150.10 Decisions of a board of review.

(a) *Notice of decisions.* Notice of the decision of a board of review will be accomplished as prescribed in paragraph 100, Manual for Courts Martial, 1951 (16 F. R. 1303). In any case where a board affirms a sentence without opinion, notice upon the accused and appellate counsel for the accused, in accordance with paragraph 100c (1) (*a*), Manual for Courts Martial, 1951, may be accomplished by any equally expeditious means of communication.

(b) *Copies of decisions.* A copy of the decision of a board of review will be furnished appellate counsel for the accused.

§ 150.11 Continuances and interlocutory matters.

Except as otherwise provided in this part a board, in its discretion, may extend any time limits prescribed, may grant continuances for such time and as often as may appear to be just, and may dispose of any interlocutory or other matters, not specifically covered by these rules, in such manner as may appear to be required for a full, fair, and expeditious consideration of the case.

§ 150.12 Reconsiderations.

(a) *General provisions.* A board of review, in its discretion, may on its own motion or upon petition by appellate counsel reconsider its decision in any case within ten days from the time an accused is notified of the decision of the board, provided, a petition for Grant of Review or a Certificate for Review has not been filed with the Court of Military Appeals, or a record of trial for review under Article 67(b)(1) of the Code has not been received by the court.

(b) *Petition for reconsideration.* A petition for reconsideration shall be supported by a certificate of appellate counsel to the effect that the petition is presented in good faith and not for delay, and shall briefly and directly state the grounds for reconsideration including a statement of facts showing jurisdiction in the board. No reply or oral argument will be received on a petition for reconsideration unless ordered by the board. Consecutive petitions, and petitions that are out of time under this rule, will not be received. A petition that is received will delay the inception

of the thirty day appeal period prescribed by Article 67 (c) of the Code until the time the accused is notified of the final disposition of his petition by the board.

APPENDIXES

§ 150.21 Appendix 1.

Form for assignment of errors. (§ 150.7.)

IN THE OFFICE OF THE
JUDGE ADVOCATE GENERAL OF THE AIR FORCE [1]

Before Board of Review No. ------

UNITED STATES

v.

Private JOHN RICHARD ROE, U. S. Air Force, AF00000000, 3000th Training Squadron, 4000th Technical Training Group.

Case No. -------. Tried at ----------, on ---------- 19----, before a G. C. M. appointed by CG ---------- Air Force.

ASSIGNMENT OF ERRORS

SUMMARY OF PROCEEDINGS

Upon trial by general court-martial the accused pleaded not guilty to, and was found guilty of, absence without leave from 2 June 1951 until 1 July 1951 in violation of U. C. M. J. Art. 86, and of the larceny of a watch of a value of $75.00 the property of Private Schmidt, in violation of U. C. M. J. Art. 121. On ----------, 19---- he was sentenced to dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for 4 years. The convening authority approved the sentence, forwarded the record of trial to the Judge Advocate General of the ---------- and directed that pending completion of appellate review the accused be transferred to the command of ----------, where he is presently confined in the base stockade, ---------- Air Base, ----------.

ERRORS

The following errors are assigned:

1. The law officer erred in admitting in evidence as Prosecution's Exhibit No. 1, an alleged extract copy of the morning report of the 3000th Training Squadron dated 2 June 1951 (R. 17).

The exhibit shows that the alleged morning report was signed, and indicates that the entry as to the accused's alleged unauthorized absence was made, by Sergeant William Q. Johns, 3000th Training Squadron. Under pertinent regulations in effect at the time the alleged entry was made, a noncommissioned officer was not the proper person to sign the morning report and had no official duty to record the fact of unauthorized absence.

2. The court erred in its findings of guilty of absence without leave (R. 29), as there was no competent evidence of the alleged unauthorized absence.

3. ----------

4. ----------

(S) ---------- ----------,
JOHN J. DOE,
Major, USAF, Office of the Judge Advocate General, U. S. Air Force, Appellate Defense Counsel.

[1] Use Judge Advocate General of the Army, Judge Advocate General of the Navy, or General Counsel of the Treasury Department, respectively, for Army, Navy, or Coast Guard accused, and modify title accordingly.

§ 150.22 Appendix 2.

Form for cover page of brief. (§ 150.8.)

IN THE OFFICE OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE [1]

Before Board of Review No. ------

UNITED STATES

v.

Private JOHN RICHARD ROE, U. S. Air Force, AF00000000, 3000th Training Squadron, 4000th Technical Training Group

Case No. -------. Tried at ----------, on ---------- 19----, before a G. C. M. appointed by CG ---------- Air Force.

BRIEF ON BEHALF OF ACCUSED

(BRIEF ON BEHALF OF THE GOVERNMENT)

(REPLY BRIEF ON BEHALF OF ACCUSED)

ROGER Q. SMITH,
Attorney-at-Law, Crow Building, Muscatine, Iowa, Civilian Counsel for Accused.

WILLIAM R. QUEEN,
Major, USAF, Office of the Judge Advocate General, U. S. Air Force, Appellate Defense Counsel.

§ 150.23 Appendix 3.

Form for contents of brief on behalf of accused. (§ 150.8.) (For form of cover page, see § 150.22.)

INDEX OF BRIEF

(Omit if brief is less than 10 pages long)

Summary of proceedings.
Statement of facts.
Assignment of errors.
Argument:
I. An extract copy of a morning report entry, which entry was made by a noncommissioned officer who had no official duty to make the entry, is not admissible in evidence as an exception to the hearsay rule.
a. Such an entry is not an official record.
b. The local practice of permitting unauthorized persons to sign morning reports in violation of Departmental regulations cannot create a custom having the force of law so as to impose upon the maker of the writing a duty to record the facts contained therein.
c. An extract copy of an alleged morning report is not a business entry.
II. The improper cross-examination of an accused, who has testified only as to the circumstances under which an alleged confession had been obtained, concerning the issue of guilt or innocence constitutes fatal error.
Conclusion.

TABLE OF AUTHORITIES

MANUAL FOR COURTS-MARTIAL

MCM, 1951, par. 140*a*.
MCM, 1951, par. 144*b*.
* * * * *

CASES

----------, v. United States, -- F. 2d ---.
* * * * *

STATUTES

18 U. S. C. -------
* * * * *

REGULATIONS

AFR -------, 10 August 1950.
* * * * *

MISCELLANEOUS

Fifth Amendment of the Constitution.
Winthrop, Military Law and Precedents, 2d Ed. 1920 Reprint, pp. -------.

UNITED STATES v. Private JOHN RICHARD ROE, U. S. Air Force, AF00000000, 3000th Training Squadron, 4000th Technical Training Group

Case No. -------. Tried at ----------, on ---------- 19----, before a G. C. M. appointed by CG ---------- Air Force.

BRIEF ON BEHALF OF ACCUSED

SUMMARY OF THE PROCEEDING

(See first paragraph of Appendix 1)

* * * * *

STATEMENT OF FACTS

Briefly summarized the record of trial shows ------ (State all the facts material to the consideration of errors assigned).

ASSIGNMENT OF ERRORS

The following errors are assigned:
(See Appendix 1)

* * * * *

ARGUMENT

(Discuss the points presented separately and in detail under the headings listed in the index, citing and quoting applicable authority deemed to have an important bearing).

* * * * *

CONCLUSION

For the reasons stated, the findings of guilty and the sentence should be set aside and the charges should be dismissed.

(S) ---------- ----------,
ROGER Q. SMITH,
Attorney-at-Law, Crow Building, Muscatine, Iowa, Civilian Counsel for Accused.

(S) ---------- ----------,
WILLIAM R. QUEEN,
Major, USAF, Office of the Judge Advocate General, U. S. Air Force, Appellate Defense Counsel.

SUBCHAPTER D—SECURITY

PART 155—INDUSTRIAL PERSONNEL ACCESS AUTHORIZATION REVIEW REGULATION

Sec.

155.1 General.
155.1–1 Authority.
155.1–2 Purpose.
155.1–3 Definitions.
155.1–4 Policy.
155.1–5 Program.
155.1–6 Scope of program.
155.2 Organization.
155.2–1 Office of Industrial Personnel Access Authorization Review.
155.2–2 Industrial Personnel Access Authorization Screening Board.
155.2–3 Industrial Personnel Access Authorization Field Boards.
155.2–4 Responsibilities of military departments for administrative support.
155.2–5 Central Industrial Personnel Access Authorization Board.
155.2–6 Composition of boards in agency cases.
155.2–7 Access authorization of nominees.
155.3 Standard and criteria.
155.3–1 Standard for issuing an access authorization.
155.3–2 Criteria for application of standard in cases involving individuals.
155.3–3 Guidance for the application of the standard and criteria.
155.4 Processing of cases.
155.4–1 Emergency action.
155.4–2 Forwarding cases.
155.4–3 Initial adjudication procedures (Screening Board action).
155.4–4 Personal appearance.
155.4–5 Procedures for personal appearance proceedings.
155.4–6 Field Board's report.
155.4–7 Action by the Central Industrial Personnel Access Authorization Board.
155.4–8 Action by the Secretary of Defense or the Administrators.
155.4–9 Procedure after final determinations.
155.4–10 Authority of the Secretary of Defense, and the Administrators, Federal Aviation Agency and the National Aeronautics and Space Administration.
155.5 Miscellaneous.
155.5–1 Pending cases.
155.5–2 Reconsideration of prior decisions.
155.5–3 Monetary restitution.

AUTHORITY: §§ 155.1 to 155.5–3 issued under R.S. 161, sec. 202, 61 Stat. 500, as amended; 5 U.S.C. 22, 171a. E.O. 10501, Nov. 5, 1953, 18 F.R. 7049; 3 CFR (1953 Supp.) 115; E.O. 10865, Feb. 20, 1960, 25 F.R. 1583.

§ 155.1 General.

§ 155.1–1 Authority.

Part 155 is issued pursuant to the authority vested by law, including Executive Order 10865 (reproduced as Appendix A), in the Secretary of Defense. By an exchange of letters between the Secretary of Defense and the Administrators of the Federal Aviation Agency and the National Aeronautics and Space Administration, and as provided for in section 1(b), Executive Order 10865, the Department of Defense has been authorized to act for and in behalf of the Federal Aviation Agency and the National Aeronautics and Space Administration in the performance of the administrative and personnel services set forth in this Part 155.

§ 155.1–2 Purpose.

(a) The Secretary of Defense and the Administrators of the Federal Aviation Agency, and the National Aeronautics and Space Administration have prescribed specific requirements, restrictions, and other safeguards which they consider necessary to protect (1) releases of classified information to or within United States industry that relate to bids, negotiations, awards, or the performance or termination of contracts with their department or agency, and (2) other releases of classified information to or within industry which their department or agency has responsibility for safeguarding. In this connection, this Part 155 prescribes uniform standards, criteria, and procedures for processing to final determination all cases which come within the scope of the Industrial Personnel Access Authorization Review Program.

(b) Pursuant to the agreement made between the Department of Defense, and the Federal Aviation Agency, and the National Aeronautics and Space Administration (provided for in section 1(b), Executive Order 10865), this Part 155 has been extended to apply to protect the releases of classified information specified in paragraph (a) of this section. The boards and instrumentalities provided for in this Part 155 are hereby authorized to assume jurisdiction over, and as hereinafter provided, to process and make determinations in cases arising out of such releases of classified information.

(c) This Part 155 is issued to conform the Industrial Personnel Access Authorization Review Program to the requirements of Executive Order 10865.

§ 155.1–3 Definitions.

(a) Whenever the words "Department of Defense", or "Department of Defense agency or activity", or "military department" are used in this Part 155, they shall be deemed to include where applicable the Federal Aviation Agency, or the National Aeronautics and Space Administration.

(b) *Access authorization.* An authorization to have access to one or more categories of information classified in accordance with Executive Order 10501. (NOTE: Actual access, when authorized, requires both an access authorization and a "need to know.") In the case of a contractor, an "access authorization" is an authorization for the contractor involved to have access to specific categories of classified information provided such access is (1) required in connection with the bidding, negotiation, award, performance, or termination of contracts with a Department of Defense agency or activity or (2) required in connection with other releases of classified information to or within industry. In the case of a contractor employee, an "access authorization" is an authorization for the employee to have access to specific categories of classified information provided such access is (i) required for the performance of his work with a particular contractor on contracts with a Department of Defense agency or activity or (ii) required in connection with the release of classified information to or within industry.

(c) *Administrator.* The Administrator of the Federal Aviation Agency, or the National Aeronautics and Space Administration.

(d) *Agency case.* A case arising out of the release of classified information to or within industry directly by the Federal Aviation Agency or the National Aeronautics and Space Administration in connection with the bidding, negotiation, award, or performance or termination of a contract by one of those agencies.

(e) *Applicant.* Any person who is eligible to have the matter of granting, revoking, or denying him an access authorization determined or reconsidered under the Industrial Personnel Access Authorization Review Program (Part 155) as provided for in §§ 155.1–6 and 155.5–2.

(f) *Contractor.* An industrial, educational, commercial, or other entity which has executed a contract or a Department of Defense Security Agreement (DD Form 441) with a Department of Defense agency or activity.

(g) *Personal appearance proceeding.* A proceeding before the New York, Washington, or Los Angeles Industrial Personnel Access Authorization Field Board convened and conducted in accordance with this Part 155. The use of the terms "personal appearance proceeding" or "proceeding" in this Part 155 does not imply, and shall not be construed to mean, that such procedures are subject to the provisions of the Administrative Procedure Act, or that the rules of evidence customary in the courts of the United States shall be applied.

§ 155.1–4 Policy.

(a) The responsibilities of the Department of Defense, including those imposed by the President in Executive Order 10865, necessitate application of policies designed to minimize the possibility of compromise incident to placing classified information in the hands of industry. Adequate measures will be taken to insure that no person is granted, or is allowed to retain, an authorization for access to classified information unless the available information justifies a finding that such access authorization, at the specific classification category granted, is clearly consistent with the national interest.

(b) A determination that granting or retaining authorization for access to information of a specific classification category is not clearly consistent with the national interest shall result in denying or revoking authorization for such access. Any determination under this Part 155 adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned. A determination under this Part 67 favorable to an applicant is not, in and of itself, an access authorization; nor is it in any sense a determination that the applicant concerned actually requires access to classified information. Since an access authorization relates only to access to classified information, denying or re-

voking such an authorization does not preclude participation in unclassified work.

(c) In the absence of the power to subpoena witnesses, the Secretary of Defense, through the Director, Office of Industrial Personnel Access Authorization Review, may issue in appropriate cases invitations and requests to appear and testify, and may defray reasonable and necessary expenses incurred by such witnesses, in order that the applicant may have the opportunity for cross-examination provided by this Part 155. So far as the national security permits, investigative agencies under the control of the Department of Defense shall cooperate by identifying to the Office of Industrial Personnel Access Authorization Review, persons who have made statements adverse to the applicant and by assisting in making such persons available for cross-examination.

(d) All personnel involved in the processing of cases under the Industrial Personnel Access Authorization Review Program shall comply with the applicable directives pertaining to the safeguarding of classified information and the handling of investigative reports. No classified information, nor any information which might compromise investigative sources or methods or the identity of confidential informants, shall be disclosed to any applicant, or to his counsel or representatives, or to any other person not authorized to have access to such information. In cases involving individual applicants, the employer concerned may be advised only of the final determination in the case and of any interim decision to suspend an access authorization previously granted. Except at the written request of the applicant, the Department of Defense shall not release copies of the Statement of Reasons or findings relative thereto outside of the Executive Branch of the Government.

§ 155.1–5 Program.

The Industrial Personnel Access Authorization Review Program is hereby revised, modified, and continued in accordance with this Part 155. The Program shall be administered by the Director, Office of Industrial Personnel Access Authorization Review, who shall have a staff for that purpose. The Office of Industrial Personnel Access Authorization Review shall consist of the following elements:

(a) The Office of the Director.

(b) The Industrial Personnel Access Authorization Screening Board (hereinafter called the Screening Board).

(c) The Industrial Personnel Access Authorization Field Boards (hereinafter called the Field Boards).

(d) The Central Industrial Personnel Access Authorization Board (hereinafter called the Central Board).

§ 155.1–6 Scope of program.

(a) Except as provided in subparagraph (4) of this paragraph the procedures established in this Part 67 shall be applicable to cases in which the applicant is eligible under the Armed Forces Industrial Security Regulation for consideration as to the granting or continuing of an access authorization and in addition thereto:

(1) A Department of Defense agency or activity has recommended that an access authorization of a contractor or contractor employee be denied or revoked;

(2) A Department of Defense agency or activity has suspended an access authorization of a contractor or contractor employee;

(3) A Department of Defense agency or activity has denied or withdrawn a temporary access authorization from an individual, other than a foreign national, who falls within such categories as may be established under this subparagraph (3); or

(4) Action is requested by the Secretary of Defense, or the Secretary of any military department or the Administrator concerned.

(b) Once access authorization has been suspended, or a Statement of Reasons has been issued, or a temporary authorization for access has been withdrawn or denied in the case of applicants included in categories established under paragraph (a) of this section, these procedures may be invoked by an applicant even though his employment has been terminated.

§ 155.2 Organization.

§ 155.2–1 Office of Industrial Personnel Access Authorization Review.

(a) *Organization.* (1) The Office of Industrial Personnel Access Authorization Review shall be established in the Office of the Secretary of Defense and will function under the administrative jurisdiction of the Assistant Secretary of Defense (MP&R). The Office shall be headed by a civilian Director appointed by the Secretary of Defense after consultation with the Assistant Secretary of Defense (MP&R) and the Secretaries of the Army, Navy and Air Force. Policy guidance for the operation of the program including manpower and personnel requirements shall be provided by the Assistant Secretary of Defense (MP&R). The Director shall be responsible for administering the Industrial Personnel Access Authorization Review Program, including its constituent boards; he shall advise and consult with the Secretaries of the Army, Navy and Air Force in carrying out this responsibility. He shall be responsible for ensuring that the Screening, Field and Central Boards are provided with such advice, assistance and personnel, including legal and security advice, as he considers necessary to enable these elements properly to carry out their functions under this Program. He shall have such professional, technical, and clerical staff as he may require to carry out his responsibilities, as set out herein, and such other related responsibilities as may be prescribed. The Director is authorized to obtain information, assistance, and advice directly from any agency or activity of the Department of Defense, and, in accordance with established policies, from other agencies of the Government. He shall prepare monthly reports showing caseloads and the status of pending cases. The Director may issue such supplemental instructions, not inconsistent with this Part 155, as may be desirable for the administration and efficient operation of this Program, including rules for the processing of cases, the conduct of screenings, personal appearance proceedings, determinations and reviews, and for guidance in the application of the standard and criteria set forth in § 155.3. In any particular case, the Director may request additional investigation to be made subject to the provisions of any agreements with investigative agencies outside the Department of Defense.

(2) The Office of Industrial Personnel Access Authorization Review shall be located in the Pentagon and shall be supported administratively by the Office of the Secretary of Defense. The military departments shall make appropriate allocations of funds, military and civilian personnel, and personnel spaces.

(3) Communications shall be addressed to the Director, Office of Industrial Personnel Access Authorization Review, The Pentagon, Washington 25, D.C.

(b) *Department counsel.* The Office of Industrial Personnel Access Authorization Review shall include within its staff a sufficient number of qualified attorneys, who may be stationed in Washington, D.C. or at such other locations as the Director may select, to act as counsel for the Department of Defense in each case in which a personal appearance proceeding is held under this Part 155. When designated by the Director to serve in this capacity, department counsel shall perform the functions normally and customarily associated with said position. Department counsel shall also advise and assist the Screening Board as required, and shall represent the Department of Defense before the Central Board when appropriate.

(c) *Files.* The complete files of all review cases pertaining to industrial personnel shall be maintained by the Department of the Army.

§ 155.2–2 Industrial Personnel Access Authorization Screening Board.

(a) The Screening Board shall be located in the Office of Industrial Personnel Access Authorization Review and shall be responsible for the performance of the duties and functions hereinafter prescribed.

(b) The Secretary of each military department shall appoint one or more members, military or civilian, to the Screening Board as the caseload requires. Appropriate official designated by each Secretary will submit nominations through the Director, who will review the qualifications of each nominee and make an appropriate recommendation to the Secretary concerned. Except as provided in § 155.2–6, any three members so appointed, one from each military department, shall constitute a quorum-panel so that more than one panel may be convened at the same time. The Director shall designate one member to serve as Chairman of the Screening Board.

(c) The Screening Board shall have jurisdiction over all cases which are re-

ferred to it in accordance with this Part 155.

§ 155.2–3 Industrial Personnel Access Authorization Field Boards.

(a) There shall be three field boards, which shall be known as the New York, the Washington and the Los Angeles Industrial Personnel Access Authorization Field Boards and which shall be located in said cities. Additional field boards may be established by the Director with the approval of the Secretaries of the Army, Navy and Air Force. Panels of existing field boards may be convened at other locations to provide prompt and convenient personal appearance proceedings. Each field board shall be responsible for the performance of the duties and functions hereinafter prescribed.

(b) The Secretary of each military department shall appoint one or more members, military or civilian, to each field board as the caseload requires. Appropriate officials designated by each Secretary will submit nominations through the Director, who will review the qualifications of each nominee and make an appropriate recommendation to the Secretary concerned. The Director shall designate either one member of the board or a staff member to serve as administrative director of each board who will be responsible for the immediate operations of the board. A quorum-panel may consist of any one civilian member who is a qualified attorney, or of any three members, one from each military department, of whom at least one shall be a civilian and at least one shall be a qualified attorney. When a panel of three members is convened, the administrative director shall designate one member to act as Chairman. A quorum-panel may exercise all of the authority conferred on the board or Chairman by this Part 155.

(c) Each field board will have jurisdiction over all cases referred to it in accordance with this Part 155.

§ 155.2–4 Responsibilities of military departments for Administrative support.

(a) Except as provided in paragraph (b) of this section, the field boards shall be supported administratively by the following military departments, which shall appoint such other personnel as may be required by the Director to assist each field board:

New York Industrial Personnel Access Authorization Field Board Department of the Army.

Washington Industrial Personnel Access Authorization Field Board Department of the Air Force.

Los Angeles Industrial Personnel Access Authorization Field Board Department of the Navy.

(b) Whenever, pursuant to direction of the Director, a panel of a field board established under § 67.2–3(a), is convened at any of the following named locations, the commanders named, respectively, shall arrange or provide for the administrative support needed by such board panel in order to discharge its official business at such locations:

Alaska: Commander, Alaskan Air Command.

Virgin Islands, Canal Zone, and Puerto Rico: Commanding General, USA, Carribean.

Guam, American Samoa, Wake, Midway, Guano Island and Hawaii: Commandant, 14th Naval District.

(c) Where a panel of a field board is convened at a location other than its principal office or at a location outside the jurisdiction of the commanders named in paragraph (b) of this section, the military department requested by the Director shall provide space, facilities and clerical personnel for each personal appearance proceeding and for the prompt making of a verbatim transcript thereof.

(d) As a verbatim transcript will be required of each personal appearance proceeding before a field board, it is the responsibility of each of the above mentioned commanders to provide the necessary personnel and facilities for the prompt making of such transcripts.

§ 155.2–5 Central Industrial Personnel Access Authorization Board.

(a) There is hereby established a Central Board, which shall be located in the Office of Industrial Personnel Access Authorization Review, and shall be responsible for the performance of the duties and functions hereinafter prescribed.

(b) The Secretary of each military department shall appoint one or more members, military or civilian, to the Central Board as the caseload requires. Appropriate officials designated by each Secretary will submit nominations through the Director, who will review the qualifications of each nominee and make an appropriate recommendation to the Secretary concerned. The Director shall designate one member to serve as Chairman of the Central Board. Except as provided in § 155.2–6, any three members so appointed, one from each military department, shall constitute a quorum-panel so that more than one panel may be convened at the same time. One of the members of each quorum-panel must be a qualified lawyer and each quorum-panel shall include at least one civilian.

(c) The Central Board shall have jurisdiction over all cases referred to it in accordance with this Part 155.

§ 155.2–6 Composition of boards in agency cases.

(a) Whenever an agency case is referred for consideration and determination under the Program the Administrator concerned shall be entitled to appoint one member to the Screening Board and two members to the Central Board. Such appointments shall conform to the requirements of § 155.2–7.

(b) Whenever an agency case is referred to the Screening or Central Boards, the Director shall notify the Administrator concerned thereof. The Administrator, or his designee, shall, in their absolute discretion, exercise or waive the right of his agency to be represented on the board involved and shall notify the Director thereof in writing, which notification shall be made a permanent part of the record in the case. If the right is exercised, the Screening Board panel to which the case is referred shall consist of four members and the Central Board panel of five members, instead of the usual three members; if it is waived the board shall be constituted as provided in § 155.2–2, or § 155.2–5.

§ 155.2–7 Access authorization of nominees.

No person shall be appointed Director, board member, or staff member under this Program until such person has been granted an authorization for access to Top Secret information, or its equivalent, based on a background investigation.

§ 155.3 Standard and criteria.

§ 155.3–1 Standard for issuing an access authorization.

Authorization for access to classified information of a specific classification category shall be granted or continued only if it is determined that such access by the applicant is clearly consistent with the national interest.

§ 155.3–2 Criteria for application of standard in cases involving individuals.

(a) Commission of any act of sabotage, espionage, treason, or sedition or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason or sedition.

(b) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, revolutionist, or with an espionage agent or other secret representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means.

(c) Advocacy of use of force or violence to overthrow the Government of the United States, or of the alteration of the form of Government of the United States by unconstitutional means.

(d) Membership in, or affiliation or sympathetic association with, or participation in the activities of any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, fascist, communist, or subversive, or which has adopted or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of Government of the United States by unconstitutional means.

(e) Intentional, unauthorized disclosure to any person of classified information, or of other information, disclosure of which is prohibited by law.

(f) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(g) Participation in the activities of an organization established as a front for an organization referred to in paragraph (d) of this section, under circumstances indicating that his personal views were sympathetic to the subversive purposes of such organization.

(h) Participation in the activities of an organization with knowledge that it had been infiltrated by members of subversive groups under circumstances indicating that the individual was a part of, or sympathetic to, the infiltrating element or sympathetic to its purposes.

(i) Sympathetic interest in totalitarian, fascist, communist, or similar subversive movements.

(j) Sympathetic association with a member, or members, or an organization referred to in paragraph (d) of this section. (Ordinarily, this will not include chance or occasional meetings, nor contacts limited to normal business or official relations.)

(k) Currently maintaining a close continuing association with a person who has engaged in activities or associations of the type referred to in paragraph (a) through (i) of this section. A close continuing association may be deemed to exist if the individual lives at the same premises as, frequently visits, or frequently communicates with such person.

(l) Close continuing association of the type described in paragraph (k) of this section, even though later separated by distance, if the circumstances indicate that renewal of the association is probable.

(m) Willful violation or disregard of security regulations.

(n) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

(o) Any deliberate misrepresentations, falsifications or omission of material facts from a Personnel Security Questionnaire, Personal History Statement, or similar document.

(p) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.

(q) Acts of a reckless, irresponsible or wanton nature which indicate such poor judgment and instability as to suggest that the individual might disclose classified information to unauthorized persons, or otherwise assist such persons, whether deliberately or inadvertently, in activities inimical to the national interest.

(r) Any illness, including any mental condition, of a nature which, in the opinion of competent medical authority, may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(s) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may be likely to cause action contrary to the national interest.

(t) The presence of a spouse, parent, brother, sister, or offspring in a nation whose interests may be inimical to the interests of the United States, or in satellites or occupied areas of such a nation, under circumstances permitting coercion or pressure to be brought on the individual through such relatives which may be likely to cause action contrary to the national interest.

(u) Refusal by the individual, without satisfactory subsequent explanation, to answer questions before a Congressional or legislative committee, or Federal or State court or other tribunal, regarding charges of his alleged disloyalty or other misconduct.

§ 155.3–3 Guidance for the application of the standard and criteria.

(a) The activities and associations listed in § 155.3–2, describe conduct which may, in the light of all the surrounding circumstances, be the basis for denying or revoking an access authorization. The conduct varies in implication, degree of seriousness and significance depending upon all the factors in a particular case. Therefore, the ultimate determination of whether an authorization should be granted or continued must be an over-all common-sense one on the basis of all the information which may properly be considered under this Part 155 including but not restricted to such factors, when appropriate, as the following: the seriousness of the conduct, its implications, its recency, the motivations for it, the extent to which it was voluntary and undertaken with knowledge of the circumstances involved and, to the extent that it can be estimated and is appropriate in a particular case, the probability that it will continue in the future.

(b) Legitimate labor activities shall not be considered in determining whether access authorization should be granted or continued.

(c) It is essential to the efficient, economical, and equitable operation not only of the Industrial Personnel Access Authorization Review Program, but of the total procedures whereby the Department of Defense authorizes access to classified information, that applicants provide full, frank and truthful answers when they complete official questionnaires or other similar documents, or respond to official inquiries. Accordingly, the deliberate giving of false or misleading testimony or information on relevant matters, may be sufficient standing alone to justify denying or revoking access authorization and shall be weighed carefully before a determination is reached under this Program.

(d) The granting or continuing of an authorization for access to a contractor is not clearly consistent with the national interest if the access authorization of an owner, officer, director, or any executive of the contractor who is required to have such an access authorization, has not been, or would not be, granted under the standard and criteria set forth in §§ 155.3–1 and 155.3–2.

§ 155.4 Processing of cases.

§ 155.4–1 Emergency action.

Department of Defense activities or agencies may not make a final determination denying or revoking an authorization for access. In exceptional cases officials authorized by the military department concerned may suspend an authorization previously granted to an individual (but not to a facility) when, in the opinion of the authorized official, the individual's continued access to classified information, pending action by the Screening Board, would constitute an immediate threat to the national interest. Any such suspension action shall be reviewed by the Screening Board to determine its propriety.

§ 155.4–2 Forwarding cases.

Department of Defense activities or agencies shall forward to the Director all cases prescribed in § 155.1–6(a), together with the complete file, including the recommendation in the case, the reasons therefor, and all other available information and material relevant to a determination. After ensuring that the file has been properly prepared and transmitted, the Director shall forward it to the Screening Board for appropriate action.

§ 155.4–3 Initial adjudication procedures (Screening Board action).

(a) The Screening Board shall review each case referred to it by the Director and shall determine in accordance with the standard and criteria set forth in § 155.3 of this Part 155 whether the reported information warrants (1) authorizing or continuing to authorize access at the specific classification category requested or (2) further processing as set forth below.

(b) With respect to any case pending before it, the Screening Board may request the Director to:

(1) Request further investigation, specifying the particular points on which the Board feels its information is not adequate.

(2) Issue to the applicant such written interrogatories as the Board may deem desirable.

(3) Arrange for an interview with the applicant.

(4) Arrange for an interview with any witness who has given information relevant to a decision in the case.

(c) The Screening Board may, with respect to any case pending before it, determine at any time that an existing authorization shall be suspended. Upon any such determination, the Director shall notify the applicant, the contractor, the office of the cognizant military department and the agency or activity which forwarded the case to him.

(d) If the Screening Board determines that access at the specific classification category requested should be granted or continued in effect, it shall prepare its determination in accordance with the instructions set out in paragraph (i) of this section. The Director shall notify the agency or activity which forwarded the case to him of the determination and instruct it to effect the authorization where appropriate. The Screening Board shall reconsider its determination at the request of the Secretary of Defense, the Secretary of a military department, or the Administrator concerned.

(e) If the Screening Board concludes on the basis of the information available

to it and in accordance with the standard and criteria set forth in § 155.3 that the case does not warrant a determination favorable to the applicant, it shall prepare a Statement of Reasons informing the applicant of the grounds upon which his access authorization may be defined or revoked. This Statement of Reasons shall be as comprehensive and detailed as the national security permits. At the time a Statement of Reasons is issued, any access authorization previously granted for Secret or Top Secret shall be suspended or limited to Confidential unless such access authorization was granted pursuant to board action under any industrial personnel review program in which case the Screening Board shall determine whether the access authorization should be suspended or limited. The Screening Board shall also determine whether any access authorization previously granted for Confidential should be suspended or limited.

(f) The Director shall forward the Statement of Reasons and a copy of this Part 155 to the applicant and shall inform him of the status of his access authorization pending a final determination. An applicant who has been served with a Statement of Reasons and who has filed under oath or affirmation a written reply thereto which complies with the requirements of paragraph (g) of this paragraph shall be afforded:

(1) An opportunity to appear personally before a field board for the purpose of supporting his eligibility for access authorization and of presenting evidence in his own behalf.

(2) A reasonable time to prepare for that appearance.

(3) An opportunity to be represented by counsel without cost to the Government.

(4) The opportunity to cross-examine adverse witnesses prescribed in § 155.4–5 (b).

(g) Before an applicant is afforded an opportunity to make a personal appearance before a field board he must submit a detailed written answer under oath or affirmation specifically admitting, denying or disclaiming knowledge of each allegation and each supporting fact alleged in the Statement of Reasons. The applicant's answer must either admit or deny each allegation or supporting fact, giving such explanation as may be available to him, or disclaim knowledge thereof. A general denial or other similar answer is not sufficient. The applicant must set out his position with sufficient particularity to disclose the basis thereof, in order that the Department of Defense may determine in advance of the personal appearance proceeding whether the allegations and supporting facts are wholly denied, denied in part, or wholly admitted and make arrangements to produce such information in support as may be required. The Director may decline to accept answers which do not meet the above requirements and, upon notice to the applicant, may refuse to continue to process his application. In that event, the Director shall suspend any access authorization then in effect and give appropriate notice. In the alternative, the Director may forward the case to a field board which may treat allegations or supporting facts with respect to which the Director finds the answer is insufficient as established for the purpose of making a determination under this Program.

(h) Where the applicant:

(1) Files an answer which complies with paragraph (g) of this section, and requests a personal appearance proceeding, or where, although the answer is insufficient, the Director elects to proceed as provided for in said paragraph (g) of this section, the Director shall assign the case to a field board for a proceeding.

(2) Files an answer which complies with paragraph (g) of this section, but elects not to request a personal appearance proceeding, the Director shall assign the case to the Central Board for determination on the basis of all available information including the answer and all documents in support thereof.

(3) Does not answer, the Director shall instruct the department which forwarded the case to deny or revoke access authorization, as appropriate, and shall advise the applicant.

(i) All determinations by the Screening Board shall be made in executive session. A determination to grant or continue access authorization shall be by unanimous vote. No person other than members of the Board shall be present when the Board deliberates and reaches its determination.

(j) Decisions adverse to the applicant announced by the Director in accordance with paragraph (h)(3) of this section, may be reconsidered by the Screening Board at the request of the Director, or at the request of the applicant addressed through the Director, after a finding by the Screening Board that there is newly discovered evidence or that other good cause has been shown.

§ 155.4–4 Personal appearance.

(a) Promptly after being notified by the Director that a case has been referred for a personal appearance proceeding, the Chairman of the field board shall set a time and place for the proceeding and inform the applicant thereof. Personal appearance proceedings shall be held as soon as practicable, allowing the applicant and the Department of Defense a reasonable time to prepare. Postponements may be granted by the Chairman in his sound discretion upon application by either party with notice to the other.

(b) Normally, a personal appearance proceeding shall be held at the home office of the field board concerned. When the applicant so requests and when in the discretion of the Chairman equity to him requires that the proceeding be held in a different place, or when the interests of the government would be served thereby, field boards, subject to the overall authority of the Director, may arrange to convene at such times and places as will best meet the above objectives.

(c) It is to the advantage of both the applicant and the Department to shorten and simplify the proceedings before the field board by stating the issues and arriving at an agreed-upon version of the facts in the case when it is possible to do so. Department counsel is authorized to consult directly with the applicant, or if he has counsel or representative, with them, for purposes of reaching mutual agreement upon arrangements for an expeditious proceeding in the case. Such arrangements may include clarification of issues, and stipulations with respect to testimony and the contents of documents and other physical evidence. Such stipulations when entered into shall be binding upon the applicant and the Department of Defense for the purpose of these proceedings.

(d) The applicant is responsible for producing witnesses in his own behalf or presenting other evidence before the field board to support his reply to the Statement of Reasons. When specific assistance is requested, however, the department counsel and the Chairman of the field board may provide such assistance, upon a showing that it is practicable and necessary. In the Chairman's sound discretion, invitations to attend the proceeding as witnesses in the applicant's behalf, or requests for specific documents or other physical evidence, may be tendered upon application, provided a showing of the necessity for such assistance has been made.

(e) Department counsel is responsible for producing at the proceeding witnesses and information relied upon by the Department to establish these facts alleged in the Statement of Reasons which have been controverted. Every reasonable and practicable effort shall be made to obtain witnesses and to facilitate their appearance in accordance with the policy set out in § 155.1–4(c). When requested all Department of Defense agencies and activities shall cooperate in carrying out this policy.

(f) Where an applicant who has requested an opportunity to appear fails without sufficient reason therefor to appear at the time and place set for the proceeding, or at any postponement thereof, and has not requested that his case be determined on the basis of all available information including any written material he may have submitted, the field board shall return the case to the Director without further action. The Director shall then take action under § 155.4–3(b)(3).

§ 155.4–5 Procedures for personal appearance proceedings.

(a) *General provisions.* (1) Personal appearance proceedings are designed to ascertain all the relevant facts in a case to aid in reaching fair and impartial determinations. Such proceedings are not to be conducted with the formality of a court proceeding or of an administrative hearing conducted under the Administrative Procedure Act, but rather as administrative inquiries held for the purpose of affording the person concerned an opportunity to appear for the purpose of supporting his eligibility for an access authorization and to permit the Department of Defense to inquire fully into the matters related to the particular case. As provided in paragraph (b)(1) of this section, the customary rules of evidence shall not be controlling.

(2) Personal appearance proceedings conducted under this Part 155 are not adversary in nature. Nevertheless, a careful and searching inquiry into the facts is necessary if the objectives of this Part 155 are to be effectuated. Field Boards shall be alert to the necessity for identifying and resolving disputed issues of fact whenever possible and shall make their rulings with these considerations in mind.

(3) Personal appearance proceedings shall be conducted in an orderly manner and in an atmosphere of dignity and decorum. They may be attended only by the members of the field board, the applicant and his counsel or representatives, authorized personnel of the Department of Defense and necessary clerical personnel. Unless the Chairman of the field board rules otherwise, a witness may be present only when he is testifying.

(4) The Director shall designate a qualified attorney to represent the Department of Defense and to act as department counsel in each case. He shall represent the Department, and shall be responsible for making a complete record and for placing before the field board all material which may properly be incorporated therein. He shall question Department of Defense witnesses and cross-examine witnesses produced by the applicant, although the field board may also question any witness.

(5) After the proceeding has been convened, and the Statement of Reasons and the applicant's answer thereto have been entered into the record, normally the applicant shall have the right to make a general opening statement either in person or by counsel, and to present his case. He may call witnesses, testify in his own behalf if he so desires and present documents, or other information, in support of his application for access authorization and cross-examine witnesses produced by the Department of Defense.

(6) Witnesses before the field board shall testify subject to the provisions of sec. 1001, Title 18, U.S. Code. Before testifying they shall be informed that said section makes it a criminal offense punishable by a maximum of five years imprisonment, $10,000 fine, or both, knowingly and willfully to make a false statement or representation to any department or agency of the United States as to any matter within the jurisdiction of any department or agency of the United States. Written interrogatories must be sworn to before a notary public or other official authorized to administer oaths.

(7) When appropriate the field board shall amend the Statement of Reasons to conform it with the information available and enter the amendment into the record. When such amendments are made, the Chairman of the field board shall grant the applicant such additional time as, in his sound discretion, he deems appropriate to answer such amendments and to secure and present evidence pertaining thereto.

(8) The field board may recess the proceeding at any time at the request of the applicant or his counsel, department counsel, or upon its own motion.

(9) Before the Chairman of the field board adjourns the proceeding, he shall ask the applicant whether he desires additional time to secure and present additional evidence or to submit a brief. If the applicant desires to present such additional material, the field board shall determine the time within which it must be presented and the form in which it will be received. The Chairman shall also advise the applicant that announcement of the determination in his case will be made by the Director, Office of Industrial Personnel Access Authorization Review.

(10) A verbatim transcript (in triplicate) shall be made of the proceedings and such transcript shall become a permanent part of the record. The transcript shall not include information introduced in accordance with the provisions of paragraph (b)(5) and (6) of this section. The applicant or his designated representative shall be furnished without cost one copy of the transcript, less the exhibits, upon his request. The transcript shall be reviewed by the board prior to release to ensure that it contains no classified information, nor any information which might compromise investigative sources or methods or the identity of confidential informants.

(11) If the applicant or his counsel desires to submit corrections in the transcript to the field board, he shall note the corrections on a separate statement designating the page and line. The statement of corrections must be filed within the time set by the field board which shall determine what corrections are allowable, shall enter on the transcript by marginal notation the corrections which are allowed, and shall enter on the statement filed by the applicant the corrections which are rejected. This statement shall be made a permanent part of the record. The Chairman of the field board in his discretion may call upon the applicant or his counsel for a discussion of the corrections. Corrections shall be allowed solely for the purpose of conforming the transcript to the actual testimony.

(12) Whenever the field board concludes with respect to an issue of fact that the investigation is inadequate or that all of the information has not been fully developed or explored, it may request that further investigation be conducted and in appropriate cases may recess the proceeding pending such investigation. Such requests shall be addressed to the Director through the department counsel. Information developed through supplemental investigation shall be made available to the board in the same manner as information developed in the original investigation.

(b) *Introduction of information.* (1) The record shall consist exclusively of all information presented by the Department of Defense in accordance with this Part 155, together with all information submitted by the applicant. The record shall not be limited to evidence admissible in the courts of the United States. Any oral or documentary evidence may be received if otherwise admissible under this Part 155 and accorded the weight deemed appropriate, but irrelevant, immaterial or unduly repetitious material may be excluded, in the sound discretion of the Chairman of the field board. Efforts shall be made to obtain the best evidence available.

(2) Unless permitted by subparagraphs (5) and (6) of this paragraph, the record may contain no information adverse to the applicant on any controverted issue unless (i) the information or its substance has been made available to the applicant and he offers no objection to its presentation; or (ii) the information or its substance is made available to him and the applicant is afforded an opportunity to cross-examine the person providing the information either orally or by written interrogatories. The foregoing shall not apply to information bearing upon the characterization in the Statement of Reasons of any organization or individual other than the applicant. Information the admission of which is not prohibited by this subparagraph (2), or by any other provision of this Part 155, may be received and made part of the record and may be considered by any board or official charged with making determinations under this Part 155.

(3) Prior to the referral of a case to a field board for a personal appearance proceeding, the Director, Office of Industrial Personnel Access Authorization Review, upon application by either the applicant or the department counsel, shall rule whether, in the light of all the circumstances, testimony shall be taken personally, by deposition, or through cross-interrogatories. In making this ruling, the Director shall exercise his sound discretion and shall state his reasons therefor. He may direct the applicant or his counsel, and department counsel to frame written interrogatories and upon application by either party shall rule upon the relevancy and materiality of any question to be incorporated therein. Once the case has been referred to the field board, the Chairman of the field board shall perform this function. Any action taken by the Director under this subparagraph (3) shall be reflected in the record where appropriate.

(4) Notwithstanding any other provision of this Part 155, records compiled in the regular course of business, or other physical evidence other than investigative reports as such, may be received and considered subject to rebuttal without authenticating witnesses, provided such information has been furnished by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary of Defense or the Administrator of the Federal Aviation Agency or the National Aeronautics and Space Administration to safeguard classified information within industry pursuant to Executive Order 10865. Such documents shall be exhibited to the applicant and when received by the field board shall be made a part of the record in the case.

(5) Records compiled in the regular course of business, or other physical evidence other than investigative reports as

such, relating to a controverted issue, which, because they are classified, may not be inspected by the applicant, may be received and considered provided that (i) the Secretary of Defense or when appropriate, the Administrator of the Federal Aviation Agency or the National Aeronautics and Space Administration, or the Director, Office of Industrial Personnel Access Authorization Review, who has been designated as their special designee for that purpose pursuant to section 5b, Executive Order 10865, has made a preliminary determination that said physical evidence appears to be material, and that failure to receive and consider it would, in view of the level of access sought, be substantially harmful to the national security, and (ii) to the extent that the national security permits, a summary or description of said physical evidence shall be made available to the applicant. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency involved shall be considered.

(6) A written or oral statement by a person adverse to the applicant on a controverted issue, and not relating to the characterization in the Statement of Reasons of any organization or individual other than the applicant, may be received and considered without affording an opportunity to cross-examine the person making the statement only in circumstances described in either of the following subdivisions (i) and (ii), provided however that a summary of the statement as comprehensive and detailed as the national security permits shall be made available to the applicant:

(i) The head of the department supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his identity would be substantially harmful to the national interest.

(ii) The Secretary of Defense or when appropriate, the Administrator of the Federal Aviation Agency or the National Aeronautics and Space Administration, or the Director, Office of Industrial Personnel Access Authorization Review, who has been designated as their special designee for that particular purpose pursuant to paragraph 4a(2) of Executive Order 10865, has preliminarily determined, after considering information furnished by the investigative agency involved as to the reliability of the person and the accuracy of the statement concerned, that the statement concerned appears to be reliable and material, and has determined that failure to receive and consider such statement would, in view of the level of access sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify (*a*) due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or (*b*) due to some other cause determined by the Secretary or the Deputy Secretary of Defense, or when appropriate, by the Administrator or Deputy Administrator of the Federal Aviation Agency or the National Aeronautics and Space Administration to be good and sufficient.

(7) A written or oral statement of a person relating to the characterization in the Statement of Reasons or any organization or individual other than the applicant may be received and considered without affording the applicant an opportunity to cross-examine the person making the statement, irrespective of whether the statement is adverse to the applicant or relates to a controverted issue, provided the applicant is given notice that it has been received and may be considered by the board, and is informed of its contents to the extent permitted by § 155.1–4 of this part 155.

(8) Whenever information is made a part of the record under the exceptions authorized by subparagraph (5) or (6) (i) or (ii) of this paragraph, the record shall contain certificates evidencing that the determinations required therein have been made. Such certificates shall include the reasons therefor and shall be made available to the applicant unless their disclosure is prohibited by § 155.1–4 of this Part 155.

(9) In any case where information is received by the field board pursuant to subparagraph (5) or (6) (i) or (ii) of this paragraph, a final determination adverse to the applicant in a Department of Defense case shall be made only by the Secretary of Defense, and in an agency case by the Administrator of the Federal Aviation Agency or of the National Aeronautics and Space Administration, as appropriate, based upon their personal review of the case.

§ 155.4–6 Field Board's report.

(a) As promptly as possible after the proceeding and after full consideration of the record and of any arguments made or briefs submitted, the field board shall prepare a report which shall include a recommended decision in the case, prepared in accordance with the standard and criteria set forth in § 155.3. The field board's report shall contain a recitation of the questions presented, a summary of the evidence received, findings of fact with respect to each allegation made, and its conclusion on each question presented for consideration. The field board's report shall be forwarded through the Director to the Central Industrial Personnel Access Authorization Board. The report shall not be made available to the applicant.

(b) Whenever an applicant has made a personal appearance before a field board, a decision adverse to him may be made only on grounds stated in the Statement of Reasons and any amendments thereto and must be based upon a record that is in conformity with Executive Order 10865 and this Part 155. A field board or the Central Board may not receive or consider any information with respect to any fact in issue, unless such information is made available to such board in accordance with this Part 155.

(c) In every case where applicable, the field board shall give appropriate consideration to the fact that the applicant did not have the opportunity to inspect classified information or to identify or cross-examine persons constituting sources of information. It shall also give appropriate consideration to whether information was given under oath or affirmation, and whether or not the person concerned has had an opportunity to rebut it. In every case where classified physical evidence is involved, information as to the authenticity and accuracy of said physical evidence furnished by the investigative agency shall be considered.

§ 155.4–7 Action by the Central Industrial Personnel Access Authorization Board.

(a) Whenever a case is referred to the Central Board, it shall make a final determination subject to the provisions of § 155.4–9(c) of this Part 155, in cases which do not fall within the provisions of § 155.4–5(b) (5) or (6) (i) or (ii), specifying the specific category of classified information to which access shall be granted or continued where appropriate.

(b) In cases where the provisions of § 155.4–5(b) (5) or (6) (i) or (ii) apply, the Central Board shall (1) prepare a final determination where the decision is to grant or continue access at the specific classification category requested, or (2) where it concludes that access at that specific classification category is not warranted, it shall so notify the Director.

(c) Before the Central Board makes a final decision, it shall take the following action, as applicable:

(1) If the board reaches a tentative decision adverse to the applicant, it shall, through the Director, give notice thereof to the applicant together with notice of its proposed findings for or against him with respect to each allegation in the Statement of Reasons, and shall provide him with an opportunity to make an appearance before it, in person or by counsel, or to file a written brief. Within ten (10) calendar days after his receipt of such notice, the applicant may file with the board a written notice of intention to appear or to file a written brief. If the applicant files such written notice of intention, the board shall fix as early a date as practicable for filing a written brief or making a personal appearance before it, and, through the Director, shall give notice thereof to both the applicant and department counsel and at the same time shall furnish department counsel with copies of the tentative decision and proposed findings as previously furnished to the applicant.

(2) If the board reaches a tentative decision favorable to the applicant, it shall, through the Director, give notice thereof to the department counsel together with notice of its proposed findings for or against the applicant with respect to each allegation in the Statement of Reasons, and shall provide department counsel with an opportunity to make an appearance before it, or to file a written brief. Within ten (10) calendar days after receipt of this notice, department counsel may file with the board a written notice of intention to appear or to file a written brief. If department counsel files such written notice of intention, the board shall fix as early a

date as practicable for filing written brief or making personal appearance before it, and, through the Director, shall give notice thereof to both department counsel and the applicant and at the same time shall furnish the applicant with copies of the tentative decision and proposed findings as previously furnished to department counsel.

(3) Personal appearances before the Central Board and written briefs filed with the Central Board are intended to permit the applicant and department counsel to present their positions based exclusively upon the record made before the field board, and shall not be used as a substitute for proceedings before such a board. Argument may be made, but witnesses shall not be heard and testimony shall not be taken.

(4) Under subparagraphs (1) and (2) of this paragraph, when the applicant or department counsel, as the case may be, has filed a written notice of intention, the other shall be entitled at the designated time to appear personally or file a written brief as he may prefer. Failure by him to utilize this opportunity shall be deemed a waiver thereof.

(5) After the applicant and department counsel have submitted written briefs or appeared before the Central Board, as provided in subparagraphs (1) and (2) of this paragraph, the board shall reach a final determination in all cases in which it is authorized to do so, and shall refer all other cases to the Director for action by him in accordance with § 155.4–8 of this Part 155. If the applicant under subparagraph (1) of this paragraph, or department counsel under subparagraph (2) of this paragraph, fails to file written notice of intention, or fails, after filing such notice, to appear or file a written brief in a timely manner, the tentative decision of the board shall automatically become final in all cases in which the board is authorized to make a final determination and notice thereof shall be given in accordance with § 155.4–9; in all other cases the tentative decision shall be referred to the Director for action by him in accordance with § 155.4–8.

(d) In reaching a determination or conclusion as hereinabove provided, the Central Board may adopt, modify or reverse the findings, conclusion, or recommendation of the field board, or may request further investigation or may return the case through the Director to the field board with instructions to take further testimony or conduct other proceedings. In each case it shall consider the matters set out in § 155.4–6(c).

(e) In cases in which it is authorized to reach a final determination, the Central Board shall prepare an opinion which shall include an analysis of the evidence, findings of fact and the reasoning on which the determination is based. The determination shall be reached by majority vote, shall be signed by the members, and made a permanent part of the record in the case. If a determination is not unanimous, a minority opinion shall be filed.

§ 155.4–8 Action by the Secretary of Defense or the Administrators.

Whenever a case falls within the provisions of §§ 155.4–5(b) (5) or (6) (i) or (ii), and the Central Board concludes that access at the specific classification category requested is not warranted, the Director shall forward the case to the Secretary of Defense or the Administrator of the Federal Aviation Agency, or the National Aeronautics and Space Administration as appropriate for determination. The determination shall include a review of any determinations made pursuant to § 155.4–5(b) (6) (ii) (b) by any official other than the Secretary or the Administrator.

§ 155.4–9 Procedure after final determinations.

(a) Final determinations reached by the Central Board shall be announced by the Director who shall notify the applicant of the determination in his case. Where the determination is favorable to the applicant he shall be notified only of the final conclusion reached. Where the determination is adverse to the applicant, he shall be notified only of (1) the final conclusion reached, and (2) whether a finding was for or against him with respect to each allegation in the Statement of Reasons. The Director shall also give appropriate notice to the other parties concerned.

(b) Final determinations reached by the Secretary of Defense or the Administrator concerned shall be announced by the Director. Where the determination is favorable to the applicant he shall be notified only of the final conclusion reached. Where the determination is adverse to the applicant, he shall be notified only of (1) the final conclusion reached and (2) whether a finding was for or against him with respect to each allegation in the Statement of Reasons. The Director shall also give appropriate notice to the other parties concerned.

(c) Determinations of the Central Board shall be final subject only to:

(1) Reconsideration on its own motion, or at the request of the applicant, addressed through the Director, after it has made a finding that there is newly discovered evidence or that other good cause has been shown.

(2) Reconsideration by the Central Board at the request of the Secretary of Defense, the Secretary of any military department, the Director, or when appropriate, the Administrator concerned.

(3) Reversal by the Secretary of Defense or in agency cases reversal by the Administrator concerned after consultation with the Secretary of Defense.

§ 155.4–10 Authority of the Secretary of Defense, and the Administrators, Federal Aviation Agency and the National Aeronautics and Space Administration.

Nothing contained in this Part 155 shall be deemed to limit or affect the responsibility and powers of the Secretary of Defense or of any Administrator personally, and without respect to this Part 155, to deny or revoke an access authorization in a case affecting his department or agency when he personally determines that the provisions of this Part 155 cannot be invoked consistent with the national security and that the security of the nation requires such denial or revocation of access authorization. Such determination shall be conclusive.

§ 155.5 Miscellaneous.

§ 155.5–1 Pending cases.

All cases presently pending in the Office of Industrial Personnel Access Authorization Review or before any board constituted under any industrial personnel review program shall be processed under this Part 155 unless a Statement of Reasons has been issued in the case and the applicant has been afforded a personal appearance proceeding substantially in accordance with the provisions of this Part 155.

§ 155.5–2 Reconsideration of prior decisions.

(a) Decisions rendered under any industrial personnel review program prior to the effective date of this Part 155 which denied or revoked an access authorization may be reconsidered by such boards as the Director deems appropriate at the request of the applicant, addressed through the Director, after a finding by the appropriate board that there is newly discovered evidence or that other good cause has been shown. Whenever a final determination of denial or revocation based upon a personal appearance proceeding is found to have been unauthorized at the time it was made, authority is hereby delegated to the Director, Office of Industrial Personnel Access Authorization Review, to vacate such final determination and all subsequent administrative action predicated thereon and to take such other steps as may be deemed necessary to complete reconsideration of the case.

(b) In cases where an access authorization has been previously granted and a Department of Defense agency or activity receives additional derogatory information which was not considered by a board at the time it decided the case, such agency or activity, when it is of the opinion, after reviewing the complete file including the record of any prior proceedings, that revocation of said authorization is warranted, shall forward the case to the Director through appropriate channels for referral to the Screening Board in accordance with § 155.4–2.

§ 155.5–3 Monetary restitution.

If an applicant suffers a loss of earnings resulting directly from a suspension, revocation, or denial of his access authorization, and at a later time a final administrative determination is made that the granting to him of an access authorization at least equivalent to that which was suspended, revoked or denied, would be clearly consistent with the national interest and it is determined by the board making a final favorable determinaiton that the administrative determination which resulted in the loss of earnings was unjustified, reimbursement of such loss of earnings may be allowed in an amount which shall not exceed the difference between the amount the applicant would have earned at the

rate he was receiving on the date of suspension, revocation, or denial of his access authorization and the amount of his interim net earnings. The filing and processing of any such claim shall be in accordance with such regulations as the Secretary of Defense may prescribe after consultation with the Administrators. As used herein, earnings shall not include profits. Payment shall be limited to claims administratively determined to be just and equitable. No applicant shall be compensated for any increase in his loss of earnings caused by his voluntary action in unduly delaying the processing of his case under any industrial personnel review program. Payments under this provision shall be in full satisfaction of any and all claims, of whatever nature they may be, which the applicant has or may assert against the United States, or the Department of Defense or any of its agencies or activities, or the Federal Aviation Agency, or the National Aeronautics and Space Administration, or any of them, by reason of or arising out of the suspension, revocation or denial of access authorization.

SUBCHAPTER E—DEFENSE CONTRACT FINANCING

PART 160—STATEMENT OF POLICY FOR TREATMENT OF DEPRECIATION ON EMERGENCY FACILITIES

Sec.

160.1 Purpose.
160.2 Applicability.
160.3 Basic principles.
160.4 Procedures.

AUTHORITY: §§ 160.1 to 160.4 issued under sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154.

§ 160.1 Purpose.

The purpose of this part is to restate and amend Department of Defense implementation of Defense Mobilization Order No. III–1 (former DMO–11), Amendment 1, issued by the Acting Director of Defense Mobilization, effective July 21, 1952, as amended by Amendment 2, issued by the Director of Defense Mobilization, effective May 10, 1954, with respect to the extent to which accelerated amortization may be allowed as a cost in negotiated contract pricing. The pertinent paragraphs of this amended order read as follows:

6. For the purpose of cost computations in negotiated contract pricing, true depreciation, which includes any extraordinary obsolescence reasonably assignable to the emergency period, is allowable. Any accelerated amortization of depreciation which is in excess of true depreciation, regardless of whether such excess is included in tax amortization certificates, is not allowable as an element of cost in negotiated contract pricing.

7. It is recognized that cost determination in negotiated contract pricing is a function of the procurement agency concerned. With respect to facilities to be used in the performance of negotiated contracts for which certificates have been or will be issued, the procurement agencies concerned will, to the extent required for the purpose of cost computations in connection with the negotiation of contract prices, have the responsibility for determining true depreciation. The Office of Defense Mobilization will, on request, furnish the procurement agency concerned with such information as it has or is readily available to it which is pertinent to the determination of true depreciation.

§ 160.2 Applicability.

(a) The principles and procedures set forth in this part shall be applicable in the consideration of costs for purposes of pricing or repricing of all negotiated contracts of the Departments of the Army, Navy, and Air Force, the performance of which requires the use of emergency facilities. The term "negotiated contracts", as used in this part, means all contracts, other than those awarded pursuant to formal advertising, in which costs are a factor in contract pricing; it includes cost-reimbursement-type contracts, contracts containing price redetermination clauses, incentive-type contracts, and fixed-price contracts where estimated costs are used in negotiating firm prices. The term "negotiated contracts", as used in this part, also covers subcontracts of the same types as prime contracts to the extent that the policies of the respective military departments make their representatives responsible for the approval or disapproval of prices or costs of such subcontracts. With respect to subcontracts under negotiated prime contracts the procurement agency concerned shall have no greater responsibility than heretofore.

(b) These principles and procedures shall be applicable to all negotiated contracts placed after the effective date hereof and to all existing negotiated contracts (including letters of intent) at that date where firm prices have not been finally determined or redetermined and to all existing cost-reimbursement-type contracts not completed at that date except as to predetermined overhead rates or fixed amounts of overhead which have finally been agreed upon for particular periods.

§ 160.3 Basic principles.

(a) As indicated by DMO–11, Amendment 1, "for the purpose of cost computations in negotiated contract pricing, true depreciation which includes extraordinary obsolescence reasonably assignable to the emergency period, is allowable. Any accelerated amortization of emergency facilities which is in excess of true depreciation, regardless of whether such excess is included in tax amortization certificates, is not allowable as an element of cost in negotiated contract pricing."

(b) The meaning of the term "true depreciation" shall conform to the generally accepted concept of depreciation accounting which may be defined as follows: A system of accounting which aims to distribute to the cost of operations,

the cost of capital assets calculated to have expired for any accounting period due to such causes as wear and tear, action of the elements, and prospective inadequacy or obsolescence. Obsolescence of facilities may be brought about by reduced economic utility of facilities without loss of productive utility, such as by technological changes affecting the demand for the products of an industry, as well as by changes affecting the economic use of individual machines. Special requirements for relocation of facilities may also result in obsolescence.

(c) Obsolescence of emergency facilities due to prospective loss of economic utility after the emergency period is a special hazard in some industries. However, in some cases possible overcapacity in an industry is really represented in pre-existing facilities which are in fact obsolete; in such cases the new facilities may be expected to displace the old facilities after the emergency, and it may not be said necessarily that there is extraordinary obsolescence applicable to the new facilities during the emergency period. In cases where the introduction of emergency facilities may cause prospective obsolescence of existing facilities after the emergency period (when such existing facilities are not already obsolete, in fact), true depreciation for emergency facilities should not include allowances for prospective extraordinary obsolescence of the existing facilities; however, in such cases extraordinary obsolescence applicable to the existing facilities, when used in military production, should be considered separately to the extent appropriate in the circumstances.

(d) In the case of emergency facilities covered by Certificates of Necessity, for the purpose of depreciation computations in contract pricing, an arbitrary assignment of five years from date of completion of construction or acquisition of the respective facilities shall be made as representing the period of the emergency. The entire cost of such facilities first shall be fairly apportioned as between the emergency period and the post-emergency period; secondly, the portion of the cost of such facilities assigned to the emergency period shall be prorated over the fiscal periods thereof for purposes of determining overhead costs in any fiscal period to be allocated to the cost of performance of defense or other contracts.

(e) The allocation of the cost of facilities as between the emergency period and post-emergency period shall be made with consideration of the following:

(1) The estimated prospective post-emergency usefulness of the facilities in number of years of useful productive life. Consideration should be given to the post-emergency use (both civilian and military) which it is expected the facilities will have. In this connection, the character of the expected post-emergency use may be different than the emergency-period use.

(2) The additional costs of special-construction features of the facilities fairly assignable exclusively to defense requirements.

(3) Subject to the application of the principles outlined herein, consideration shall be given to the portion of the cost of emergency facilities certified for amortization plus so-called normal depreciation for tax purposes during the emergency period on the uncertified portion of the cost of such facilities. (See particularly paragraphs (f) and (g) of this section.)

(4) (i) The normal peacetime life of facilities having a normal peacetime utility. If Bulletin F of the Bureau of Internal Revenue is used in connection herewith, care must be exercised in its use, as its data may not be typical of any specific contractor or industry, especially in the emergency period.

(ii) It must be emphasized that this is a process of cost allocation which does not contemplate an appraisal of the resale value (other than residual salvage value) or replacement cost of emergency facilities at the end of the emergency period. Potential "use value" to the particular contractor concerned after the emergency period should be the primary basis on which loss of economic usefulness, and therefore true depreciation, is determined.

(f) Certificates of Necessity have been issued in some cases providing for the amortization of emergency facilities for tax purposes during the emergency period in amounts in excess of true depreciation. It is also possible that Certificates of Necessity may have been issued in isolated cases providing for the amortization of emergency facilities for tax purposes in amounts less than true depreciation. Such variances may be attributable to the granting of other incentives than true depreciation, or to the practice of following industry-wide patterns of certification without reference to true depreciation in specific cases. The excess of tax amortization over estimated true depreciation shall not be allowable as a cost for the purpose of pricing negotiated contracts, either directly or indirectly as a factor of "contingencies" or profit allowance.

(g) It is the intent of this part to give contractors a reasonable and properly allocable allowance to cover the estimated loss of economic usefulness of their emergency facilities in production under defense contracts. The procedures for determining such allowances must be such as will expedite determination; this requires avoidance of an impossible perfectionism. There is no intent to limit the cost allowance to depreciation that would be allowable for income tax purposes if there were no Certificates of Necessity, nor to necessarily require that the allowance be below tax amortization covered by certificates. Each case must be judged on its merits in the light of these principles. If the result obtained by the application of the principles outlined herein indicates substantial justification of the total amount of amortization and depreciation allowable for tax purposes during the emergency period, as a reasonable measure of true depreciation, such amount shall be accepted, without adjustment, as true depreciation. In those isolated cases where substantial justification can be shown for a larger amount of true depreciation than the total amount of amortization and depreciation allowable for tax purposes during the emergency period, the larger amount shall be allowable as a cost for purposes of contract pricing.

(h) Contractors may use normal depreciation without requesting a determination of true depreciation, or may elect to use either normal or true depreciation after a determination of true depreciation has been made. Once either method is elected, it must be followed consistently throughout the life of the emergency facility. Where an election is made to use normal depreciation, § 15.205–9(f) of this chapter is not intended to apply to assets fully amortized on the contractor's books of account under Certificates of Necessity. Where an election is made to use true depreciation, it shall be prorated over the full five year emergency period, and proportionate amounts shall be allocated to contracts only for those fiscal periods during which the contracts are performed during the five year period. Care must be exercised to assure that no other allowance is made under the contract which would duplicate the factors, such as extraordinary obsolescence, considered in the determination of true depreciation. In addition, where an election is made to use true depreciation, contract pricing for the post-emergency period will be based on depreciation computed by allocating the undepreciated cost of the emergency facility at the end of the emergency period (cost less true depreciation for that period) over the estimated remaining life of the facility, provided the remaining undepreciated portion of such cost shall not include any amount of unrecovered true depreciation.

§ 160.4 Procedures.

(a) Cost determination in negotiated contract pricing is a function of the procurement agency concerned. With respect to emergency facilities used in the performance of negotiated contracts for which Certificates of Necessity have been or will be issued, the procurement agency concerned shall be solely responsible for estimates of such depreciation for contract pricing purposes in the light of the principles set forth in this part. The Office of Defense Mobilization will, on request, furnish the procurement agency concerned with such information as it has or is readily available to it which is pertinent to the determination of true depreciation—such requests should be held to a minimum.

(b) In order to expedite administration of the determination of true depreciation for the emergency period for a specific contractor, it will be appropriate to make over-all determinations of true depreciation of emergency facilities covered by Certificates of Necessity on a plant-wide or product-wide basis of classification of such facilities by such groupings as may be appropriate in consideration of general similarity of the facilities from the standpoint of length of useful productive life.

(c) In the case of contracts to which this part is applicable which are in force at the effective date of this part, price redeterminations, cost-incentive adjustments, and cost reimbursements may

continue to be made in accordance with the pricing formula established in the initial pricing negotiations, provided the contractors are agreeable, and provided there is no evidence that the contractor has been allowed more than true depreciation in pricing, either directly or indirectly. When costs of such contracts are redetermined in the light of the principles set forth herein, consideration shall be given to possible redetermination of the entire allowable costs and profit (or fees), as pricing factors, to the extent required to avoid excessive or duplicate allowances in costs or profits for such true depreciation. Allowances for contingencies and profits in initial price negotiations in some cases may have included indirect allowances for the excess of true depreciation or tax amortization over normal depreciation; in such cases no more should be allowed in total pricing for this factor than true depreciation.

(d) Contractors shall be required to set forth to the authorized representatives of the procurement agencies, all the pertinent facts having a bearing on estimates of true depreciation together with their evalaution thereof. Such authorized representatives of the procurement agencies will be expected to exercise reasonable judgment in their review and evaluation of the facts in arriving at estimates of true depreciation, in the light of the basic principles set forth in this part, recognizing the impossibility of having absolutely demonstrable proof of the conclusions reached.

(e) Where the emergency facilities of any contractor at one plant or at one general location are used in the performance of contracts for more than one of the military departments, one of these departments shall make determinations of true depreciation binding upon each other department. The responsible department shall be the one, if any, having plant cognizance procurement assignment; in the absence of such assignment the responsible department shall be the one, if any, having single-service audit responsibility; otherwise the responsible department shall be the one having the largest interest in effecting current procurement at the time of the determination. Similarly, each military department shall be responsible for delegating responsibility therein in a manner to avoid duplications in determinations of true depreciation within that department.

(f) The following additional procedure is appilcable to Emergency Facilities covered by Certificates of Necessity issued after July 1, 1954:

Whenever a major portion of the cost of facilities in substantial amount is to be reimbursed to a contractor as an element of product prices during a relatively short period, it will be expected in appropriate cases that consideration will be given in negotiation to protecting, by appropriate agreement, the Government's interest in the continued availability of the facilities for Defense use.

PART 163—DEFENSE CONTRACT FINANCING REGULATIONS

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Subpart A—Introduction

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AUTHORITY: §§ 163.1 to 163.97 issued under R. S. 161, sec. 2202, 70 Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply sec. 301, 702(d), 64 Stat. 800, 816, as amended, secs. 2307, 7364, 70A Stat. 131, 455, as amended, sec. 1, 72 Stat. 972; 50 U.S.C. App. 2091, 2152(d), 10 U.S.C. 2307, 7364, 50 U.S.C. 1431, E.O. 10480, 18 F.R. 4939, 3 CFR, 1953 Supp., E.O. 10789, 23 F.R. 8897.

§ 163.1 Scope; financing defined.

This part covers the financing of contracts and subcontracts for the national defense. It is applicable to contract financing for all types of contracts for all kinds of work, supplies and services, except as provided in § 163.69–2 or as otherwise indicated herein. The term "financing" as used in this part covers Government guaranteed loans, advance payments and progress payments (not including partial payments for delivery of one or more completed units called for under a contract) necessary for both performance and termination purposes, to the extent authorized by law.

§ 163.2 Purposes.

This part is intended to (a) state basic contract financing policy, (b) assure proper uniformity in policies procedures and forms, (c) provide for application of the fundamental management principle of internal check and balance, (d) insure that the need for advance or progress payments by contractors will not be treated as a handicap in awarding contracts, (e) facilitate and accelerate the making of progress payments requested by small business concerns under Government contracts, and (f) emphasize the usefulness and desirability of providing proper contract financing assistance to small business concerns.

§ 163.3 Application.

This part supersedes all regulations, directives, procedures and instructions inconsistent herewith, including the joint regulations dated December 17, 1956, issued as AR 715–6, NAVEXOS P–1006 (NPD 31–001) and AFR 173–133.

§ 163.4 Implementation.

The content of this part shall be distributed promptly to all personnel concerned with procurement and with contract financing, including contracting officers, for information and compliance. Copies of all implementing regulations, directives, procedures, and instructions, as issued from time to time within the Military Departments, at all levels, shall be furnished promptly through channels to the Army Comptroller, in the Department of the Army, the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and the Deputy for Contract Financing to the Assistant Secretary (Financial Management) in the Department of the Air Force, with an additional copy to be forwarded by those contract financing offices, respectively, to the Assistant Secretary of Defense (Comptroller). Changes and additions for this part will be developed within the Contract Finance Committee, in the manner contemplated by §§ 163.12–3 and 163.32.

Subpart A—Introduction

§ 163.5 Scope of subpart.

This subpart describes the methods of contract financing by guaranteed loans, advance payments and progress payments, and states basic authority and responsibilities.

§ 163.6 Guaranteed loans; authority.

(a) Under section 301(a) of the Defense Production Act of 1950, as amended, and section 301 of Executive Order No. 10480, the Department of the Army, the Department of the Navy, and the Department of the Air Force, among others, are designated as "guaranteeing agencies," and authorized by section 302 (a) of Executive Order No. 10480 "to guarantee in whole or in part any public or private financing institution (including any Federal Reserve Bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan * * * which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite production and deliveries or services under Government

contracts for the procurement of materials or the performance of services for the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense."

(b) As defined in section 702(d) of the Defense Production Act of 1950, as amended, "the term 'national defense' means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, and directly related activity."

§ 163.7 Guaranteed loans: description.

Guaranteed loans, usually called "V-loans," are essentially the same as other loans made by financing institutions without guarantee, except that under a standard form of guarantee agreement the guaranteeing agency is obligated on demand of the lender to purchase a stated percentage of the loan and to share losses in the amount of the guaranteed percentage. Guaranteed loans afford an especially convenient medium for financing borrowers who hold subcontracts, or numerous prime contracts, or prime contracts with several contracting agencies. Funds are disbursed and collected by the lending institution, and its personnel administer the loan. Government funds are not involved except for purchases of the guaranteed portion of loans or settlement of losses.

§ 163.8 Advance payments: authority.

Advance payments on all contracts are authorized in accordance with the provisions of 10 U.S.C. 2307. When appropriate, advance payments are also authorized pursuant to the Act of August 28, 1958 "to authorized the making, amendment and modification of contracts to facilitate the national defense" (Pub. Law 85–804, 72 Stat. 972), Executive Order No. 10789, and Department of Defense Directive No. 7830.1. Navy advance payments for salvage operations are also authorized by 10 U.S.C. 7364.

§ 163.9 Advance payments; description.

Advance payments are advances of money, made by the Government to a contractor prior to, in anticipation of, and for the purpose of complete performance under a contract or contracts. Advance payments are made only to prime contractors. They are expected to be liquidated from payments due to the contractor incident to performance of contracts. Since they are not measured by performance, they differ from partial, progress, or other payments made because of and on the basis of performance or part performance of a contract. Advance payments may be made to prime contractors for the purpose of making sub-advances to subcontractors.

§ 163.10 Progress payments: authority.

Progress payments are authorized in accordance with the provisions of 10 U.S.C. 2307.

§ 163.11 Progress payments: description.

The term "progress payments," as used herein, signifies payments made as work progresses under a contract, upon the basis of costs incurred, of percentage of completion accomplished, or of a particular stage of completion. As used in this part this term does not include payments for partial deliveries accepted by the Government under a contract, or partial payments on contract termination claims.

§ 163.12 Responsibilities.

Sections 163.12–1 to 163.12–3 set forth organization and responsibilities.

§ 163.12–1 Organization.

In terms of organization, the financing function should be separated from the procurement function, but close cooperation between the procurement and financing functions should be preserved at all times. Insofar as progress payments are concerned, it is contemplated that contract financing officers will ordinarily participate in the development of appropriate regulations and standard contract provisions designed to avoid undue risk to the Government, but will otherwise participate only in specific cases involving policy questions or unusual financial arrangements and conditions.

§ 163.12–2 Resolution of disagreements.

If a disagreement arises between the financing office and the interested procuring activity in any Department as to whether, to what extent, or in what form, financing should be furnished, the matter will be referred immediately to and resolved in the higher echelons of authority responsible respectively for financing and procurement functions, subject to any issue being resolved ultimately by the Secretary of the Department concerned.

§ 163.12–3 Responsibility: administration: Contract Finance Committee.

(a) The responsibility for insuring uniform administration of financing in accordance with directions shall be in the Assistant Secretary of Defense (Comptroller). Specific cases need not be referred to the Office of the Assistant Secretary (Comptroller), unless policy or important procedural problems are involved, and the day-to-day financing operations shall be the responsibility of the Military Departments.

(b) Responsibility for financing in each Department shall be in the Under or Assistant Secretary responsible for the comptroller function, with the focal point of such activities at Departmental headquarters although contract financing offices may be established at the operational level determined by that Department.

(c) There shall be a Contract Finance Committee composed of a representative of the Assistant Secretary of Defense (Comptroller) as Chairman, a representative of the Assistant Secretary of Defense (Supply and Logistics) and two representatives of each Military Department (one representing procurement and one representing the contract finance office), which Committee shall meet upon call by the Chairman, upon his own initiative or when requested by a member of the Committee. This Committee shall advise and assist the Assistant Secretary of Defense (Comptroller) in assuring proper and uniform application of policies and the development of procedures and forms, and may from time to time recommend to the Secretary of Defense through the Assistant Secretary of Defense (Comptroller) and the Assistant Secretary of Defense (Supply and Logistics) such further policy directives on the subject of financing as may appear desirable. This Committee shall be responsible also for the formulation, revision and promulgation of uniform regulations on contract financing (§ 163.32). For matters involving guaranteed loans, a representative of the Board of Governors of the Federal Reserve System may be invited to meet with the Committee. The Committee also may from time to time secure the advice of representatives of other branches of the Government and other persons and may invite such representatives and persons to its meetings.

Subpart B—Basic Policies

§ 163.13 Scope of subpart.

This subpart sets forth basic policies applicable to guaranteed loans, advance payments, and progress payments. Policies and procedures more particularly pertaining to the specific methods of contract financing are contained in the sections of this part relating to each method of financing.

§ 163.14 Acceleration of payments.

Payments must be made promptly on all contracts when due. It is of continuing importance that there be acceleration of all proper payments earned by contractors, including progress payments.

§ 163.15 Timely action.

In connection with requests for provision of progress payments, advance payments, or loan guarantees, there must be timely action, no unwarranted delay, and no hesitation to make proper contract financing provisions.

§ 163.16 Uniformity.

Uniform financing policies and, so far as practicable, uniform procedures and standard forms are to be used by the Military Departments and, to the extent mutually agreed upon by the Military Departments, facilities and personnel are to be used in common.

§ 163.17 Small business.

Immediate and continuing attention must be given at all levels to insure that constructive measures will be taken to facilitate and accelerate necessary contract financing assistance to small business concerns. Every reasonable effort must be made to assist small business concerns in the resolution of their problems relative to the financing of contract performance, including any cases in which it may be reasonably necessary to

increase the rate for progress payments and to assist them in understanding and complying with the requirements of performance as to payment forms, inspection and cost accounting. However, the issuance of a certificate of competency by the Small Business Administration shall not be considered as a requirement that contract financing must be provided by a Military Department.

§ 163.18 Purpose of contract financing.

The providing of funds for payment of expenses of performance of contracts is an essential element of defense production. Contract financing is to be regarded as a useful working tool that may be used to the benefit of the Government, for aiding procurement by expediting performance of defense contracts and subcontracts. The contract financing system makes possible production in volume that could not be accomplished otherwise. Prudent contract financing supports procurement and production and fosters the small business policy by providing necessary funds to supplement other funds available to contractors for contract performance.

§ 163.19 Support of procurement: minimizing monetary loss.

Financing must support procurement and should be designed to aid, not impede, essential procurement, but should be so administered as to avoid the risk of monetary loss to the Government to the extent compatible with aiding essential procurement.

§ 163.20 Reasonable need.

Government financing for production or services should be provided only if, and to the extent, reasonably required for prompt and efficient performance of Government contracts and subcontracts.

§ 163.21 Working capital purposes.

(a) Guaranteed loans under section 301 of the Defense Production Act of 1950, as amended, will be used primarily for working capital purposes. Such guarantee authority will not be used for loans for facilities expansion.

(b) It is not the intent of these regulations, however, to preclude guarantees in cases in which a relatively small part of the loan might be used for facilities expansion of a minor or incidental nature: *Provided*, That the borrower's financial condition is such that the facilities expansion will not delay or impair repayment of a guaranteed loan which would be granted on a commercial banking basis.

(c) Since advance payments and progress payments should be self-liquidating from contract performance, they also will not be used to finance fixed asset acquisitions for contractor ownership.

(d) These limitations are not intended to apply to contracts under which facilities are being acquired for Government ownership.

§ 163.22 Order of preference.

In determining what form of financing shall be recommended or made available to suppliers, the following order of preference generally should be observed, recognizing that there may be valid exceptions in specific cases or classes of cases:

(a) Private financing on reasonable terms (without governmental guarantee)—supplemented when reasonably necessary by Government financing to the extent reasonably required;

(b) Customary progress payments, as described herein (§163.72) including progress payments incident to "Small Business Restricted Advertising" or incident to procurement by formal advertising, as authorized herein (§ 163.73) except that guaranteed loans may be preferable in customary progress payments when so indicated by a contractor and financing institution; or progress payments based on a percentage or stage of completion, confined to contracts for construction (§ 10.101–6 of this chapter), shipbuilding and ship conversion, alteration or repair;

(c) Guaranteed loans (with financing institutions participating to an extent appropriate to the risk involved);

(d) Unusual progress payments, as described herein (§ 163.74), not including contracts involving advance payments;

(e) Advance payments (§ 163.58).

§ 163.23 Financing not a handicap.

The need for advance payments or for progress payments or for a guaranteed loan (with reasonable percentage of guarantee) shall not be treated as a handicap in awarding contracts to those qualified contractors who are deemed competent and capable of satisfactory performance (§§ 1.903–1 and 2.407 of this chapter and §§ 163.24 and 163.26). The ability of the contractor to perform the contract, including the availability of money or credit necessary for performance, must be reasonably assured in all cases. Awards which are otherwise proper must not be deterred by the necessity for providing reasonable contract financing. A contractor deemed reliable, competent, capable and otherwise responsible, must not be regarded as any less responsible by reason of the need for reasonable contract financing provided or guaranteed by a Military Department. Responsible personnel must endeavor to assure that full, proper and prudent use is made of contract financing, in such ways that financial difficulties will not bring about delay or failure in performance or result in monetary losses to the Government. In selection of an appropriate method for provision of funds, contractors will not be expected to seek or obtain loans or credit (a) at excessive interest rates or other exorbitant charges, or (b) from agencies of the Government outside the Department of Defense.

§ 163.23–1 Non-indication of contract financing need.

Before contract awards, contractors sometimes indicate that contract financing by guaranteed loan, progress payments or advance payments will not be required. In some of those cases, the need for such contract financing later arises, usually from changed circumstances differing from those projected at the time of the award. The fact that a contractor did not indicate before award that he would require contract financing, or that he stated that he would not require such financing, does not disqualify the contractor for proper contract financing conforming to these regulations and should not be permitted to deter such financing. Each such case should be dealt with and decided on its merits, without giving weight to the contractor's earlier error with regard to the need for contract financing.

§ 163.24 Financial responsibility of contractors.

Procuring activities in placing contracts must give due regard to the financial capabilities of the supplier. Financial difficulties encountered by contractors and subcontractors may (a) disrupt production schedules, (b) cause wastage of manpower and materials, and (c) if connected with guaranteed loans, advance payments, or progress payments, result in monetary loss to the Government. Also, if financial crises occur in the course of a contractor's production, the need for continued production may make guaranteed loans or advance payments imperative for continuance of such production, even though monetary losses may be likely under the circumstances. In order to reduce these hazards so far as possible, contracts should be entered into only with those potential contractors who meet the requirements of § 1.903–1, or § 2.407 of this chapter, and who have the financial capacity or credit (giving due regard to the availability of progress payments, guaranteed loans, and advance payments), technical skill, management competence, and plant capacity and facilities (including subcontracting capacity) reasonably to assure their ability to perform their contracts in accordance with their terms. Care should be taken also to the extent practicable to avoid the placement of additional contracts or subcontracts with contractors in situations where additional contracts will overload the contractor's production capacity, overextend his financial resources and credit, and thus tend to interfere with timely performance of contracts on hand, and create need for additional contract financing arrangements, which may be impossible to establish on a prudent basis. In all cases, whether involving formal advertising or negotiation, it must be determined that the contractor is financially and otherwise able to perform the contract. In addition, consideration must be given to the judgment, skill, and integrity of the potential contractor, and to his reputation and experience, including prior work of a similar nature done by him, and the other factors set forth in § 1.903–1, § 2.407 or § 3.101 of this chapter, as appropriate. Persons placing subcontracts, at all levels of subcontracting, should be encouraged to apply these standards in placing subcontracts. Some practical examples of important points which should be kept in mind are set out below.

§ 163.24–1 Small volume of work.

Unduly small volume of work, in relation to amount of overhead expense, may result in losses to such extent as

to interfere with or prevent performance of contracts. The order backlog on hand and reasonably foreseeable should be sufficient to enable operations to continue at least through the contemplated term of the contracts for which contract financing is being considered.

§ 163.24–2 Large volume of work.

Unduly large volume of work to be performed concurrently with a contract may result in insufficiency of cash or credit to support the work, or in delays or collapse on account of inadequacy of plant space, production equipment, engineering or production personnel, or unavailability of materials, parts or components. An apparently unduly large backlog may or may not be a deterrent, depending upon the relationship of the scheduling of all the work to the available credit, facilities, personnel, suppliers and subcontractors.

§ 163.24–3 Unrealistic cost estimates.

Incompetence, carelessness, or overoptimism of management may cause or permit the making of bids or proposals for work involving techniques, processes or "know-how" on which the contractor has no sufficient experience. Such work may be for the end items under a Government contract or for end items under other contracts (whether existing or prospective). In either case, unforeseen difficulties of performance and unanticipated excess of costs over contract prices may prove ruinous. In such cases, the proposed price, or cost estimates, whether or not based on past performance and experience of qualified competent contractors for the same or similar kinds of end items, may be unrealistic for the inexperienced contractor and may make the company's financial projections completely unrealistic. Comparative bids or proposals by others are important and useful factors in evaluation of the adequacy or inadequacy of proposed prices. However, a proposed price that seems unduly low may in fact be founded solidly on superior efficiency or on the discovery of new and improved techniques or processes that will enable the contractor to perform at costs substantially less than those of other contractors.

§ 163.24–4 Technical and engineering evaluation.

While management and technical competence must be evaluated largely on the basis of past performance of management and technical personnel, in doubtful cases financial forecasts cannot be analyzed adequately without the benefit of technical and engineering judgments based upon detailed scrutiny of the contractor's production plans and contemplated processes in relation to the quantity and quality of available facilities and personnel. However, while inexperience of the contractor in production of a contemplated end item or similar kinds of end items is a danger signal requiring close collaboration of all personnel concerned with the various elements of contract awards and contract financing, close analysis of the facts may provide sound reasons for belief that the prospective contractor, with proper and prudent contract financing assistance, will be able to perform on terms and conditions, including price, beneficial to the Government.

§ 163.24–5 Importance of type contract development.

The type of contract may constitute the dividing line for decision as to ability or inability to perform and the related question of the prudence or imprudence of providing contract financing. If the contemplated end items are essentially development items—whether or not the contract is labeled a development contract—a fixed-price type of contract, whether firm fixed-price, fixed-price with escalation or fixed-price subject to price revision with a ceiling, may prove impossible of performance within the contract price and may result in nondelivery of acceptable end items and in disaster to the contractor. Except for those contractors who are exceptionally strong financially, it is imperative in these cases that financial analysis and evaluation be based upon the closest possible scrutiny by, and stated judgments of, qualified engineering and technical personnel with regard to the details and difficulties of performance and their relation to projected costs of the work.

§ 163.24–6 Engineering, production, and purchase plans.

Company plans may contemplate engineering costs, tooling costs, direct labor costs, or prices of materials, parts or components that are unduly low. Financial forecasts cannot be made intelligently or usefully without the benefit of careful and competent analysis of all significant elements of the engineering, production and purchasing aspects—by qualified technical personnel. Such analysis would need to evaluate the company's estimated costs for each significant performance element against the probable costs to be encountered for all elements necessary for actual performance. It may, for example, be foreseeable upon analysis that the company has materially underestimated the amount of engineering and testing necessary for completion of a satisfactory preproduction model, or the quantity and quality of special tooling or other manufacturing aids that may be required for production of the end items, or the amount of direct labor that will be required, or the purchase prices of necessary materials, parts or components. The company may also have been in error as to the probable technical ability of contemplated subcontractors to provide acceptable parts or components. The company may even—in some cases—be expecting to have significant portions of the work done by technically or financially irresponsible subcontractors, some of whom may be affiliated with the contractor or related financially to the contractor's ownership or management. All these elements, in appropriate cases, require analysis and evaluation by competent engineering and technical personnel and bear upon the soundness or lack of soundness of the evaluations of financial capability and of the risks of monetary losses that would be involved in contract financing.

§ 163.26 Coordination before contract award.

For effective application of the principles stated in § 163.26, each purchasing office should be staffed with and use the services of persons qualified and competent to evaluate credit and financial problems, or each contracting officer should have available within his procuring activity, and should use the services of persons so qualified and competent to evaluate credit and financial problems. Among other things, the duties of such persons would be to arrange, prior to contract awards, and so far as practicable, prior to subcontract arrangements, that financing for performance of contemplated contracts and subcontracts is reasonably assured prior to or contemporaneously with the making of contracts. In those exceptional cases where there is substantial doubt that a prospective contractor has the financial capacity or credit resources essential to the performance of the contemplated contract, the interested procuring activity, after having determined that no satisfactory alternative sources of supply are readily available on terms equally as favorable to the Government, should, prior to placement of the contract, consult with the appropriate contract financing office of the interested Department, to determine whether financing can prudently be arranged. These contract financing offices are the Army Comptroller, in the Department of the Army, the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and the Deputy for Contract Financing to the Assistant Secretary (Financial Management), of the Air Force. In such consultation it should be resolved, if placement of the contract is deemed beneficial to the interests of the Government, whether and by what means financing should be provided.

§ 163.27 Financial information and analysis.

(a) The necessity for financial information and analysis, and the scope, depth and detail of analysis of the financial capability of contractors, for contract financing purposes, must vary reasonably with the circumstances of particular cases. The extent of accumulation of data, and the evaluation thereof, must necessarily be determined by the informed judgment of competent, responsible personnel. Essentially, this process must be neither over-done nor under-done. For example, financial analysis would serve no useful purpose in connection with provision of customary progress payments (1) for contractors who are known from experience to be so strong and so competently managed as to be fairly relied upon to perform their contracts satisfactorily, or (2) for contractors who are known to be in satisfactory financial condition and operating profitably, where the items involved are regularly produced by the contractor and the contract amounts are well within the normal sales volume of the contractor. In such cases, the financial evaluation might well consist of no more than scrutiny of readily available

published balance sheets and operating statements. In doubtful cases, the financial analysis would have to be as broad, and as meticulously and painstakingly detailed, as is necessary to fit the circumstances of the case. The obtaining of information relevant to financial capability, and the analysis and proper evaluation of that data, are of particular importance where (1) the contractor is a new supplier to the procuring activity, or (2) the contractor has not supplied the item or a substantially similar item to the procuring activity within the preceding twelve months, or (3) the contractor is a newly organized concern, or (4) the contractor is on a list requiring pre-award clearances or special clearance prior to awards, or (5) the contractor is on any current list indicating current or past contract defaults or delinquencies, or (6) the contractor is known to be involved in performance difficulties as a supplier or subcontractor for private customers on either Government or commercial work, or (7) the contractor is listed on the consolidated list of contractors indebted to the Government (Hold-Up List), or (8) there are any known facts or circumstances which support reasonable doubts as to the contractor's financial capability of performance.

(b) When only minimum information is reasonably necessary, such as a current balance sheet and operating statement and similar financial statements for the next preceding fiscal year, these may be either published statements, audited statements, certified statements, or any combination of those, from any convenient source.

§ 163.28 Appropriate information: purposes.

The kinds of information and data that may be appropriate under the circumstances of particular cases (§ 163.27) for adequate disclosure of the contractor's financial condition, for full understanding of the propriety and reasonable necessity for contract financing, for evaluation of the contractor's ability to perform its contracts without loss to the Government, and for informed judgment with regard to the terms, conditions and protective provisions that may be appropriate and prudent for the protection of the Government, are outlined below. It is emphasized that only those items which are appropriate to the particular case will be required.

(a) Balance sheet and profit and loss statement for the most recent fiscal year prepared and certified by an independent public accountant (including his comments, if any), and, if available, similar financial data for the two previous years; also latest available interim balance sheet and profit and loss statement of the current fiscal year; also a separate statement of amounts of defense and commercial sales. If audit reports are not available, then corresponding statements should be submitted, certified by an authorized officer, partner, or individual proprietor as truly and fully setting forth the financial condition and operating results of the applicant; also, if a proprietorship, partnership or joint venture, personal financial statements of proprietor, partners, or members of joint venture and description of individual liabilities of partners or members of joint venture on contracts of partnership or joint venture;

(b) Summary history of contractor and its principal management personnel, indicating particularly any past insolvencies of the contractor or a predecessor or of the officers, partners, or proprietors; also a description of its products or services;

(c) Statement of all affiliates of the contractor, showing financial interests of the contractor in affiliates and of affiliates in the contractor, and also mutual officers, directors, and major stockholders or owners, and disclosing character and amount of business transactions with affiliates or with officers, directors, major stockholders or owners of the contractor or its affiliates; also, if a corporation, list of major stockholders, and shares held;

(d) Statement of compensation payable to each officer, partner, proprietor, and principal executive, and to each key employee receiving comparable compensation, including bonus, commission, and profit-sharing arrangements, together with similar data for the past two years; also past and projected dividends, unless obtained with paragraph (a) of this section;

(e) Schedule of principal contracts and orders on hand, showing defense orders and civilian orders separately, and showing face amounts, unfinished amounts, and unliquidated advance or progress payments, and also indicating bids outstanding and contemplated and explanation concerning contracts under negotiation;

(f) Cash forecast, showing estimated disbursements and receipts for the period or periods involved (see §§ 163.28–1 and 163.28–2);

(g) Estimated profit and loss statements and estimated balance sheets (see § 163.28–3);

(h) Comparison of past financial results with estimates previously furnished by the contractor;

(i) Credit agency ratings of the contractor, and, when significant, credit agency ratings of principal subcontractors and of principal business customers (defense and commercial) of the contractor;

(j) Existing and contemplated credit or financing arrangements, names of parties and relationship, if any, to contractor, amounts available or to be available, periods of availability, and required or contemplated payments, including (1) loans and credits, (2) advances and progress payments, (3) projected equity capital increases, (4) deferred trade credit, if any, (5) creditor subordinations or standbys, and (6) mortgages, liens, pledges, assignments, conditional sales, lease-purchases, hypothecations, and other encumbrances or security arrangements, both existing and contemplated;

(k) Status of all tax accounts, particularly federal income, excise, and withholding taxes, and social security taxes or contributions (including verification with Internal Revenue Service, when appropriate) with special attention to the matter of federal tax delinquencies (which are covered by the lien and right of distraint and levy provided by sections 6321 and 6331 of the Internal Revenue Code);

(l) Appropriate information, explanation and schedules to indicate (1) leases, deferred purchase arrangements, and patent or royalty arrangements, outlining terms and showing relationship, if any, of other parties to the contractor, (2) insurance maintained and to be maintained, (3) contemplated capital expenditures, debt reduction or retirement, and acquisitions of capital stock, (4) delinquencies on contracts, subcontracts or purchase orders, and status thereof, (5) pending or anticipated liability for contract price refunds, or for renegotiation, or for other Government claims, (6) anticipated losses on contracts, (7) contingent liabilities, including those on endorsements, guarantees, warranties, surety bonds, and material litigation pending or threatened, (8) aging and collectibility of accounts and notes receivable, status of disputed receivables, identification of any amounts included in receivables but not currently due and payable, (9) obsolescence of inventory and method of valuing inventory, (10) aging of accounts and notes payable, identifying major creditors and interest rates and other charges, if any, and status of significant disputed items, (11) adequacy of reserves for depreciation, ventory to annual sales, (2) inventory (12) analysis of surplus;

(m) Significant ratios such as (1) inventory to sales, (2) inventory to current assets, (3) liquid assets to current assets, (4) liquid assets to current liabilities, (5) current assets to current liabilities, and (6) net worth to debt;

(n) Comments and opinion of audit agency concerning contractor's accounting system and controls, and available audit agency analysis of important elements of financial statements or projections;

(o) Other facts that may be appropriate for the purposes stated at the beginning of this section. See §§ 163.24–1 to 163.26.

§ 163.28–1 Cash flow forecast, and estimated financial statements.

In doubtful cases, an estimated cash budget (Cash Flow Forecast) and related estimated Profit and Loss Statements and estimated Balance Sheets prepared by the contractor, will be very useful for the purpose of arriving at an informed judgment as to the cash requirements (both for the contract and for the contractor's other activities), cash receipts for the contract period, and cash or credit needed to supply any excess of projected expenditures over projected receipts. When considered useful or necessary, such estimates should be requested from the prospective contractor, analyzed by financial personnel, and discussed to the extent necessary or appropriate with the prospective contractor.

Many contractors will have such projections readily available, perhaps not including estimated balance sheets. The failure of the contractor to have prepared such estimates, or resistance to their preparation, or difficulties and delays in preparation, or poor quality of the projections, or the use of unreasonable or unrealistic assumptions in their preparation, may well constitute warning signals that the company's planning has been insufficient and that significant financial troubles may be encountered during the contemplated period of contract performance.

§ 163.28–2 Realistic assumptions.

Cash forecasts can, of course, be no more reliable and representative of probable financial developments than the assumptions on which these forecasts are based. Each cash forecast and related projection should disclose the important underlying assumptions. Most important of these assumptions are the:

(a) Estimated amounts and timing of purchases of materials, parts, components, sub-assemblies, services, and payments therefor;

(b) Estimated amounts and timing of purchases of machinery and equipment, other production or test facilities, other fixed assets, and purchases or production of special tooling, and payments therefor;

(c) Schedule of fixed cash charges, such as debt installments, interest, rentals and taxes;

(d) Projected manufacturing and production schedules;

(e) Projected shipments, or delivery acceptances;

(f) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(g) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(h) Estimated amounts and timing of cash receipts from other sources.

The assumptions underlying cash forecasts should be checked for reasonableness and realism—with the contractor, Government personnel responsible in the areas of engineering, production scheduling, cost and price analysis, and with others (including prospective supply, subcontract, and loan or credit sources)—as may be prudent in the circumstances of the case.

§ 163.28–3 Estimated profit and loss statements and balance sheets.

(a) The cash budget or cash forecast does not show anticipated profit or loss, and is limited to the forecast of movements within a company's cash account. The concurrent submission of an estimated profit and loss statement covering the same period serves to tie in the anticipated cash transactions with the estimated sales and expense activity, and culminates in the estimated balance sheet position. The estimated profit and loss statement also can serve as a guide for evaluating the company's projections with respect to sales volume, cost of goods sold, gross profit and net profit in relation to the known results of past performance.

(b) The inter-relationship between the cash budget, estimated profit and loss statement and estimated balance sheet, covering a given period, is illustrated in charts 1 and 2:

CHART NO. 1

PROJECTION OF FINANCIAL STATEMENTS

	1st mo.	2d mo.	3d mo.	Totals
Profits and Loss Projection				
Net Sales	123			
Materials used	42			
Direct labor	31			
Manufacturing exp	32			
Cost of goods sold	105			
Gross profit	18			
G & A exp	10			
Operating profit	8			
Income tax provision	4			
Net profit	4			
• • •	•	•	•	•

CHART NO. 1—continued

PROJECTION OF FINANCIAL STATEMENTS—Continued

	1st mo.	2d mo.	3d mo.	Totals
Cash Projection				
Cash balance (opening)	78			
Receivable collections	112			
Progress payments received	30			
Bank loan proceeds	100			
Total proceeds	320			
Trade payables paid	76			
Direct labor paid	31			
Manufacturing exp. paid	35			
G & A exp. paid	9			
Payment on long term debt	2			
Fixed asset addition	4			
Income taxes paid	11			
Progress payments repaid	24			
Bank loan repayment	66			
Total disbursements	258			
Cash balance (closing)	62			
• •	•	•	•	•
Balance Sheet Projection	Beginning			
Assets:				
Cash	78	62		
Receivables	188	199		
Inventory	306	308		
Current assets	572	569		
Fixed assets (net)	53	56		
Deferred charges	27	25		
Total assets	652	650		
Liabilities:				
Notes payable—banks	150	184		
Progress payments outstanding	56	62		
Trade payables	102	71		
Income tax	45	58		
Accruals	30	24		
Current liabilities	383	379		
Long term debt	62	60		
Capital stock	153	153		
Surplus	54	58		
Total liabilities and net worth	652	650		
Working capital	189	190		

CHART NO. 2

INTER-RELATIONSHIP OF PROJECTION OF FINANCIAL STATEMENTS

	Bal sheet (beginning)	Cash flow DR	Cash flow CR	Profit and loss DR	Profit and loss CR	Bal sheet (ending)	Net changes
Assets:							
Cash	78		16			62	(16)
Receivables	188		112	123		199	11
Inventory	306			Purchases 45; Dir. labor and mfg. exp. incurred 62	42 Mat. used; 31 Dir. labor; 32 Mfg. exp. — Applied	308	2
Current assets	572		128	230	105	569	(3)
Fixed assets	53	4			1 Depr. (G & A)	56	3
Deferred charges	27				2 G & A exp.	25	(2)
Total assets	652	4	128	230	108	650	(2)

CHART NO. 2—continued

INTER-RELATIONSHIP OF PROJECTION OF FINANCIAL STATEMENTS—continued

	Bal sheet (beginning	Cash flow		Profit and loss		Bal sheet (ending)	Net changes
		DR	CR	DR	CR		
Liabilities:							
Notes payable—banks.	150	66	100			184	34
Progress payments	56	24	30			62	6
Trade payables	102	76			45 Purchases	71	(31)
Income tax	45	11			4	38	(7)
Accruals	30	Paid {Dir. labor 31; Mfg. exp. 35; G & A exp. 9}			{62 Dir. labor and mfg exp. incurred; 7 G & A exp.}	24	(6)
Current liabilities.	383	252	130		118	379	(4)
Long term debt	62	2				60	(2)
Capital stock	153					153	
Surplus	54				4	58	4
Total liabilities and net worth.	652	254	130		122	650	(2)

§ 163.29 Termination financing.

It is recognized that adequate protection against the financial impact of termination of Government contracts and subcontracts should encourage suppliers to invest their own funds in performance under such contracts and that financing for termination purposes will be an important aid to ultimate reconversion of industry to peacetime activities. Accordingly, termination financing may be made available, with appropriate protection of the Government's interest, either in connection with or independently of performance financing.

§ 163.30 Report of adverse developments; prompt decisions.

When materially adverse developments concerning a borrower having a guaranteed loan, or concerning a contractor having advance payments or progress payments, become known to a procuring activity, pertinent facts, including report of remedial or protective action taken or proposed, should be reported by the procuring activity to the contract financing office of the Department principally concerned with the contract financing, so that timely appropriate protective or remedial action may be taken by coordinated action of all concerned. However, the filing of such reports shall not relieve the personnel responsible for administration of the contract from taking such action as is deemed proper, prudent, and beneficial to the Government. When there are reasons to doubt the prudence of continuing progress payments or advance payments in cases involving performance difficulties or financial deterioration, decision must be made promptly and with proper regard to the harmful effects of delay on the continued operation of the contractors concerned.

§ 163.31 Reports.

Each Department shall submit reports of financing activities at such times and in such form as may be prescribed or approved by the Assistant Secretary of Defense (Comptroller).

§ 163.32 Deviations; amendments.

Actions in the exercise of the judgment and discretion allowed by these regulations are not deviations. Actions contrary to or inconsistent with or varying from these regulations would be deviations. Deviations will be permitted only when necessary in exceptional circumstances, after (a) the proposed deviation has been presented to the Contract Finance Committee, (b) the recommendations of that Committee have been obtained, and (c) the approval of the Assistant Secretary of Defense (Comptroller) or his designated representative has been given. The above procedure will be followed also for amendments to these regulations. (See § 163.4.) The provisions of Subchapter A pertaining to deviations (§§ 1.109–2 and 1.109–3 of this chapter) and to amendments (§ 1.105 of this chapter) do not apply to these contract financing regulations.

§ 163.33 Interpretations.

It is important that this part and the clauses set forth herein be applied fairly and uniformly for all contractors. When a serious question of interpretation or application of this part arises within a procuring activity, and is regarded as being of general importance, if the circumstances reasonably permit the obtaining of an advance opinion on the question from Departmental headquarters, the question should be presented, through procurement channels, to the procurement policy office of the Department primarily interested, namely, the Deputy Chief of Staff for Logistics, Office of Naval Material, or Deputy Chief of Staff/Materiel. If the circumstances do not reasonably permit request for advance opinion, report of an interpretation made (if regarded as important and of general interest for uniform application or interpretation of these regulations) should be made to the appropriate one of the procurement policy offices mentioned. Those are expected to take appropriate and timely action to obtain the views of interested offices of the other Departments, including the contract financing offices (§ 163.26). When questions submitted are considered to be of importance in the general interest of uniformity and of fair and effective administration of this part, appropriate revision of this part, will be considered in the manner outlined in § 163.4. In periods between any amendments of this part, it is contemplated that information on important interpretations of general interest, reported to or made at Departmental headquarters, will be made available to procuring activities for dissemination to interested purchasing offices.

§ 163.33a Foreign procurement.

The regulations in this part apply equally to domestic and foreign procurement, with the exceptions and qualifications stated in this section and in §§ 163.33a–1 to 163.33a–3. The enforceability of a contract provision in a foreign jurisdiction is dependent on local law and procedure. It may sometimes become necessary to take action in foreign countries to enforce collateral security or other contract financing protective provisions, or to recover property pursuant to a progress payment clause, and to collect contract financing indebtedness. In such cases, the nature and extent of remedies available for enforcement of contract provisions is necessarily determined by the laws, rules and procedures of the country in which the relief is sought.

§ 163.33a–1 Progress payments on contracts for foreign performance.

When progress payments (Subpart E of this part) are contemplated for contracts to be performed wholly or partly in a foreign country, appropriate legal advice should be obtained with respect to the validity, enforceability and effectiveness of the contemplated progress payment clause (§§ 163.79–1, 163.79–2 and 163.80) and of any proposed guarantees, pledges or other special protective arrangements, within the foreign country involved. Such legal advice should also cover the need, if any, for additional protective provisions (§ 163.80–6) or for deviations (§ 163.78–9) from the uniform clauses, that may be required to comply with the applicable foreign law and to provide for the most effective protection and enforcement of the interests of the United States. Section 163.86 requires that proposed deviations (§ 163.78–9) must have prior approval of the contract financing office (§ 163.26) after the coordination mentioned in § 163.87.

§ 163.33a–2 Advance payments on contracts for foreign performance.

When advance payments are proposed (Subpart D of this part) for contracts to be performed wholly or partly in a foreign country, the recommendation (§ 163.62) for advance payments should include appropriate legal advice along the lines of that outlined in § 163.33a–1. When advance payments are proposed to be made on contracts with foreign governments, it is expected that the advance payment arrangement, if approved (§ 163.56), would not include provisions generally unsuitable for government-to-government agreements, such as those for special bank accounts, unilateral withdrawal of funds, liens, insurance, additional security, or representations, warranties and covenants of the kinds set forth in § 163.64–2 (p) and (r). It is recognized that advance payments to foreign governments, when authorized, will

need to be adapted to the special circumstances of each case to provide appropriate protection in the light of the relationship of the United States to each affected foreign government and with due recognition of the sovereign status of the contracting parties.

§ 163.33a–3 Guaranteed loans for foreign contract performance.

When contracts or subcontracts are to be performed in a foreign country, financing by means of loans guaranteed by the military departments seldom will be practicable because of difficulties of loan administration and enforcement. When loans are to be utilized for financing of such contracts or subcontracts, it is considered generally preferable that the loans be provided within the internal financial system of the foreign country concerned, without military department guarantee.

Subpart C—Guaranteed Loans

§ 163.34 Scope of subpart.

This subpart covers the policies, organization, and procedure particularly applicable to guaranteed loans.

§ 163.35 Federal Reserve banks.

Under section 302(b) of Executive Order No. 10480, pursuant to section 301(b) of the Defense Production Act of 1950, as amended, each Federal Reserve Bank is designated and authorized to act, on behalf of each guaranteeing agency, as fiscal agent of the United States in the making of contracts of guarantee and in otherwise carrying out the purposes of section 301 of the Defense Production Act of 1950, as amended, in respect of private financing institutions. Pursuant to Regulation V of the Board of Governors of the Federal Reserve System, any private financing institution may submit to the Federal Reserve Bank of its district an application for guarantee of a loan or credit. This application is in substantially standard form, as approved by the Board of Governors of the Federal Reserve System, after consultation with the guaranteeing agencies. Forms of application, and information and guidance concerning applications, are available at all Federal Reserve Banks.

§ 163.36 Board of Governors of the Federal Reserve System.

Under section 302(c) of Executive Order No. 10480, all actions and operations of Federal Reserve Banks, as fiscal agents, are subject to the supervision of the Board of Governors of the Federal Reserve System (hereinafter referred to as "Federal Reserve Board"). The Federal Reserve Board is authorized, after consultation with the heads of the guaranteeing agencies, (a) to prescribe such regulations governing the actions and operations of fiscal agents as it may deem necessary, (b) to prescribe, either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through such fiscal agents, and (c) to prescribe regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

§ 163.37 Procedure on application of a private financing institution.

A defense contractor or subcontractor (at any level) or supplier, who requires operating funds may apply to the private financing institution selected by him, for the necessary loan or revolving credit, and furnish necessary information to the financing institution. If the financing institution is willing to extend credit, but considers Government guarantee necessary, it may file application for guarantee with the Federal Reserve Bank of its district. The Federal Reserve Bank promptly submits copy of the application to the Federal Reserve Board listing defense contracts, for transmittal to the interested guaranteeing agency, so that determination may be made as to eligibility of the prospective borrower. For the purpose of expediting, the Federal Reserve Bank may also, pursuant to general instructions of the guaranteeing agencies, submit schedules of defense contracts to the interested contracting officers, who are expected at once to take appropriate steps for determination of eligibility, and to submit their findings and report, including certificate of eligibility where appropriate, to the designated central procurement office, or contract financing office as the case may be, within the guaranteeing agency. Concurrently with the process for determination of eligibility, the Federal Reserve Bank makes any necessary credit investigation, to the extent and in the manner that it considers investigation or verification appropriate to supplement information furnished by the applicant financing institution, all with a view to expediting necessary defense financing in such a way as to afford the best reasonable protection against monetary loss. The report and recommendation of the Federal Reserve Bank are sent to the Federal Reserve Board, which transmits them to the interested guaranteeing agency, in Washington. If the application is approved on such terms and conditions as may be deemed appropriate by the responsible officer or official within the guaranteeing agency, the guaranteeing agency then authorizes the Federal Reserve Bank, by standard form of authorization transmitted through the Federal Reserve Board, to execute and deliver to the financing institution a standard form of guarantee agreement, with the terms and conditions approved for the particular case. The Federal Reserve Bank, as fiscal agent for the guaranteeing agency, then issues the guarantee to the financing institution which makes the loan. Substantially the same procedure may be followed on application for guarantee of loans to be made to a potential defense contractor who is actively negotiating or bidding for defense business, except that the guarantee is not authorized until the prospective defense contract has been executed.

§ 163.38 Loan guarantees to Federal Reserve Banks.

The Defense Production Act of 1950, as amended, and Executive Order No. 10480 also authorize guarantees for loans made or participated in by Federal Reserve Banks. The procedure outlined in § 163.37 applies also to loan guarantees where a Federal Reserve Bank is making or participating in the loan, except that in such cases the interested Federal Reserve Bank, as a financing institution, does not act as fiscal agent, and when approved, the guarantee agreement is executed by an official of the guaranteeing agency.

§ 163.38–1 Other Government agencies.

Loan guarantees are not issued to other departments or agencies of the Government.

§ 163.39 Loan guarantees for terminated contracts.

(a) Guaranteed loans ordinarily provide for financing based on the borrower's recoverable investment in defense production contracts, including those contracts which have been terminated for the convenience of the Government. Guaranteed loans also may be established after total or partial termination of contracts for the convenience of the Government, or before such termination when it is known that termination of particular contracts for the convenience of the Government is about to occur. Such guaranteed loans are expected to provide necessary financing pending termination settlements and payments, and also to provide any funds necessary for continuing performance of defense production contracts that are eligible for financing under the guaranteed loan.

(b) The procedure on applications for such guarantees will be substantially the same as that outlined in § 163.37, except that certificates of eligibility (§§ 163.48 to 163.49(k) will not be required for contracts which have been wholly terminated, nor for the terminated portion of contracts which have been partially terminated. It is of course expected that necessary precautions, appropriate to the circumstances of individual cases, will be taken, as in other cases, to avoid losses and to cause such loans to be self-liquidating from the proceeds of defense production contracts. This type of loan guarantee, intended primarily for contract termination financing, is not provided before the imminence of particular contract terminations, for the reasons outlined in § 163.47(b). Further reasons include the difficulty of determining whether contract terminations will occur in the future and will require guaranteed loan financing, and the expense and administrative burden that would be involved in establishing commitments which may in fact never be used.

§ 163.40 Guaranteeing agency.

The guaranteeing agencies which have been designated under section 301 of the Defense Production Act of 1950, as

amended, are the Departments of the Army, Navy, Air Force, Agriculture, Commerce and Interior, General Services Administration, and Atomic Energy Commission. All of the guaranteeing agencies have concurred in the following policy:

Where a prospective borrower under a V-loan has defense contracts or subcontracts in which more than one of the guaranteeing agencies are interested, the guaranteeing agency in such case will be in general that agency which, as of the time of the application for the guarantee, has the preponderance of interest in such contracts and subcontracts on the basis of the dollar amount of the prospective borrower's unfilled and unpaid balances of such contracts and subcontracts and estimated claims under terminated contracts (exclusive of contracts with advance payments, if such advance payments are not to be liquidated by the proposed guaranteed loan). If the application is approved and a guarantee agreement is executed on behalf of such agency having the preponderance of interest, that agency will bear all losses and expenses and receive all revenues under such guarantee without allocation to other agencies of the Government. In this connection, among the Military Departments, single service procurement contracts are deemed those of the purchasing department.

§ 163.40–1 Effect on preponderance of progress payments or denial of certificate of eligibility.

Among the Military Departments, the determination of preponderance of interest, under § 163.40, is made without regard to the existence of progress payments on particular contracts, and without regard to the issuance or nonissuance of certificates of eligibility on particular contracts.

§ 163.40–2 Shifting of preponderance.

During the course of a guaranteed loan, preponderance of interest in the borrower's defense production contracts may shift from one of the Military Departments, as guaranteeing agency, to another Military Department. When such preponderance has shifted materially so that substantial preponderance is in one of the Military Departments other than the guaranteeing agency, action on requests for increases in the amount of guaranteed loans, and on requests for extensions of maturity for a period of more than six months, ordinarily will be taken by the Military Department then having such preponderance of interest. However, in the above situation, action will be taken by the Military Department which has guaranteed the loan, if the loan is in distress, with fairly foreseeable losses, and the requested extension or increase is for the purpose of orderly liquidation of the loan in a manner designed to reduce the amount of the loss. If such a loan is not in distress, and losses are not fairly foreseeable, and the greater part of the borrower's defense production contracts are determined to be eligible for a continuing guaranteed loan, and the circumstances of the case are such that favorable action would have been taken by the then guaranteeing agency if it had remained preponderantly interested in the borrower's defense production contracts, similar favorable action will be taken by the Military Department then having such preponderance of interest. In these cases, while new application for guarantee is required, the file of the contract financing office which has authorized the existing guarantee will be transferred to the contract financing office of the Military Department then having preponderant interest in the case, and the information to be submitted with the application need be only current financial information, data concerning the borrower's defense production contracts, and other pertinent facts concerning the borrower and its operations, to the extent necessary to supplement and bring up to date the information previously furnished to the guarantor. In order not to disturb or impair any security for the existing loan, and for the convenience of all concerned, it is preferable that the new guarantee merely replace the former guarantee, with appropriate recitals as to cancellation of the former guarantee, and with appropriate revision of the existing loan agreement and of such collateral security instruments as may require revision.

§ 163.41 100 percent guarantees.

It is the policy of the guaranteeing agencies that 100 percent guarantees shall be limited to the greatest extent compatible with the requirements of the national defense. Applications for 100 percent guarantees will be approved only in cases in which the guaranteeing agency determines that the circumstances are exceptional, that the operations of the borrower are vital to the national defense, and that no other suitable means of financing are available.

§ 163.42 Asset formula.

It is the policy of the guaranteeing agencies that borrowings under guaranteed loans made primarily for working capital purposes should be limited, in accordance with an asset formula, to amounts which do not exceed specified percentages (90 percent or less) of the borrower's investment in defense production contracts. The formula may include all items for which the borrower would be entitled to payment on performance or termination of defense contracts, but would not include any amounts (for which no work has been done nor expenditures made by the borrower) to become due as the result of later performance under the borrower's contracts. However, any such asset formula would be subject to relaxation in appropriate cases to the extent and for the time actually necessary for contract performance where the contractor's working capital and credit are inadequate. This "asset formula" does not include "cash collateral" or bank deposit balances.

§ 163.43 Amount and maturity of guaranteed loans.

(a) Subject to the limitations of the asset formula (§ 82.42), the maximum amount of guaranteed credit in individual cases, and the maturity date of guaranteed loans or credits, are fixed to conform reasonably to the borrower's financing requirements for defense production contracts on hand at the time of application for guarantee. If additional defense production contracts are entered into after the application and before authorization of a guarantee, to such extent as to require increase in the maximum amount, or longer maturity for the requested guaranteed loan, adjustments may be made to provide for the borrower's additional financing requirements. Also, guarantee agreements for existing guaranteed loans may be amended, on submission of pertinent information and Federal Reserve Bank report to the guaranteeing agency concerned, to provide financing for defense production contracts entered into by the borrower during the term of the guaranteed loan.

(b) Also, within the limits of the applicable loan formula and ceiling amount, there is generally no objection to inclusion in the borrowing base, of assets under defense production contracts entered into after the date of the guarantee agreement. However, in exceptionally weak cases, and in the cases of guaranteed loans established for financing only one or a small number of contracts, it is the practice to require that financing of relatively substantial additional defense contracts under existing guaranteed loans be done only with the consent of the guarantor.

§ 163.44 Assignments of claims under contracts.

(a) Assignments of claims under the borrower's defense production contracts are generally required, including assignment of proceeds of such contracts entered into after issuance of the guarantee if after acquired contracts are eligible for financing under the guaranteed loan in a given case. However, assignments need not be required in particular cases, (1) where the borrower's financial condition is so strong as to cause assignments of any contracts to be considered not necessary for the protection of the loan, or (2) where incident to assignment of major contracts it is considered not necessary for the protection of the loan to require initial assignment of relatively small contracts, or (3) where the large number of contracts of the borrower for small dollar amounts, would cause the making and administration of contract assignments to be unduly burdensome and inconvenient so long as not deemed essential for the protection of the loan.

(b) It is required, as standard practice, that defense production contracts, not theretofore assigned, will be assigned whenever requested by the guarantor or the financing institution.

(c) Subcontracts and purchase orders issued to subcontractors are not considered acceptable for financing under guaranteed loans if and so long as the issuer of the subcontracts or purchase orders (1) reserves the privilege of making payments directly to the assignor or to the assignor and assignee jointly after notice of the assignment, or (2) reserves the right to reduce or set off assigned proceeds under defense production contracts by reason of claims against the borrower arising after notice of assignment and independently of defense pro-

duction contracts under which the borrower is the seller.

§ 163.45 Other collateral security.

Ordinarily, mortgages on fixed assets are not required, but they are required where considered essential to protect the Government. Liens or other security arrangements pertaining to inventories are also seldom required, except when desired by financing institutions or in exceptional circumstances when deemed necessary to protect the Government. Depending upon the circumstances of individual cases, endorsements, guarantees, subordinations, and stand-bys of other indebtedness, and other special security devices are required when deemed necessary for the protection of the Government.

§ 163.46 Contract surety bonds in relation to loan guarantees.

In most jurisdictions, upon default by a contractor and performance of the surety's obligations, the surety's right of subrogation gives to the surety, ahead of a financing institution which had made a loan for contract performance, prior claim to payments made on the bonded contract after default, and in performance of its obligations the surety also has the benefit of materials on hand that have been paid for by the contractor, even though progress on the contract before default has been financed by loans from the financing institution.

(a) Because of the foregoing, on loan guarantees in connection with prime contracts, the guarantor's loss on the loan, payable to the financing institution, may serve to take away from the Government the benefit of performance of the surety's obligations on its bond; and in subcontract cases the loan may serve to benefit the surety at the expense of the financing institution and guarantor.

(b) Except to the extent that surety bonds are required by law, bonds are generally not required. Yet it sometimes may be necessary to rely upon a contractor whose capacity to perform is so doubtful that a bond is required for the protection of the Government. The guarantee of a loan to a contractor of such doubtful capacity to perform necessarily involves unusual risks of monetary loss. Contract surety bonds, and guaranteed loans for financing bonded contracts are regarded as fundamentally incompatible unless the interests of the surety are subordinated in favor of the guaranteed loan.

(c) In order to maintain the advantages of performance bonds existing in favor of the Government on prime contracts, in cases where the Government contract or contracts covered by surety bonds are substantial in relation to the contractor's total backlog of defense production contracts or where the amount of the bond is substantial in relation to the contractor's net worth, applications for loan guarantees are approved only if the surety or sureties on the bonds involved will subordinate their rights and claims in favor of the guaranteed loan.

(d) In cases involving relatively substantial subcontracts covered by surety bonds, approval of an application for loan guarantee will also be contingent upon the establishment of a reasonable allocation agreement between the surety or sureties and the financing institution, which would have the effect of giving the financing institution the benefit, with regard to payments to be made on the contract, of that portion of its loans fairly attributable to expenditures made under the bonded subcontracts prior to notice of default.

§ 163.47 Other borrowings.

Since V-loans are generally measured, and limited by, stated percentages of the borrower's investment in defense production operations and terminated defense contracts, it is evident that borrowings outside the guarantee may be necessary in some cases to support the borrower's nondefense activities. It has been recognized in practice, that while prohibition of borrowings outside the guaranteed loan is preferable where practicable in a given V-loan case, such other borrowings should be permitted when necessary.

(a) However, in cases where borrowings outside the V-loan are not prohibited, some restrictions on unguaranteed borrowings appear necessary for protection of the Government interest. These include reasonable limitations on the amount of, and collateral security for, such unguaranteed borrowings, and usually a provision that collateral security, if any, for such unguaranteed loans made by the same financing institutions should also be secondary collateral for the V-loan.

(b) If a credit is to be guaranteed under section 301 of the Defense Production Act, in circumstances where there may be borrowings either under or outside the guarantee, the guaranteed credit, having been established, and being susceptible to use at any time, should be utilized first and fully, and not reserved as free insurance pending such time and circumstances as may make its use convenient to the financing institution. It has therefore been determined, in line with the practice developed toward the end of the past war, that for those cases in which borrowings outside the V-loan are not prohibited, it should be required uniformly that other borrowings outside the V-loan may be incurred and remain outstanding without the consent of the financing institution and the guarantor only when the V-loan is being used to the full extent permitted by the V-loan agreement. Appropriate certificates of the borrower, in the same form as those used to measure the amount that may be outstanding under the V-loan, but submitted at intervals not longer than 30 days, could be used to determine when there may be borrowings outstanding outside the V-loan.

(c) It is of course recognized that appropriate exceptions will have to be made in individual cases to permit the continuation of outstanding term loans, to permit future unguaranteed term loans for expansion of facilities, and to permit continuance of such financing as may be necessary to supplement a V-loan.

§ 163.48 Eligibility certifications.

(a) Financing through guaranteed loans may be made available to a supplier in cases where (1) the production or service is essential and (2) no alternative source is readily available without prejudice to the national defense. However, in connection with applications for guarantees or loans to be made to small business concerns, and in connection with increases or extensions of maturities of guaranteed loans made to small business concerns, and if they otherwise qualify, the factor of ready availability of alternative sources will not be considered, and the statement that the contracts or subcontracts involved cover materials or services which cannot be procured readily from an alternative source without prejudice to the national defense will be omitted from the certificate of eligibility. When financing through loan guarantees is requested, the interested procuring activity shall certify that the case meets the requirements set forth in this section, and shall accompany such certification with adequate supporting data pertinent to the case.

(b) (1). The certificates of eligibility and supporting data furnished by principally interested procuring activities, are the basis for the ultimate findings, incident to authorization or approval of loan guarantees, that the case meets the requirements of section 301 of the Defense Production Act of 1950, as amended, and of section 302 of Executive Order No. 10480.

(2) In its present form this certificate includes findings that the materials or services involved are deemed essential to the national defense, that (except for small business concerns) these cannot be procured readily from an alternative source without prejudice to the national defense, and that the contractor has the technical ability and the required facilities to perform. It is required that supporting data be contained in or accompany the certificate. It has been provided on the approved form of certificate, as the standard for guidance in considering issuance of certificates of eligibility, that:

> This is not intended as a statement that there is absolutely no alternative source other than this contractor. The certification is founded on practical considerations. These considerations include the urgency of supply schedules, technical and plant capacity and unwillingness of other suppliers, time and expense involved in reletting all or parts of contracts (including expense of termination for convenience, and delays incident to future determinations of default), comparative prices, effect of interruptions of established subcontracting arrangements, and other pertinent practical factors.

§ 163.49 Procedure for certificate of eligibility.

It is important that the processing of certificates of eligibility be accomplished expeditiously. It is necessary that there be application of uniform and consistent standards in determining eligibility.

(a) As indicated in § 163.48(b), the determination in the certificate of eligibility is based upon giving full weight to practical considerations. It is also intended that in determining whether the materials or services can be procured

readily from an alternative source without prejudice to the national defense, due consideration will be given to the effect of the use of alternative sources on the established major policies affecting procurement, such as those relating to the mobilization base, and industrial dispersal. If the reletting of contracts with other sources would involve conflict with any of such policies, such reletting in conflict with any such policy should be deemed prejudicial to the national defense. Also, in considering the practicability of alternative sources, in addition to the considerations outlined above, regard should be given to the question whether such potential alternate sources would require Government financing by progress payments, or advance payments, or Government supported financing by means of a guaranteed loan. If such financing would be required for alternative sources, such alternate sources may be fairly considered not "readily available" within the meaning of the certificate of eligibility.

(b) Ordinarily, if the certificate of eligibility is not issued by the interested procuring activity, it does not follow that the contract involved will be terminated unless the contractor is in default to the extent that termination for default is considered desirable, or unless it has been determined that the contractor will be unable to perform his contract. Thus, in determining whether alternate sources are readily available without prejudice to the national defense, consideration should be given to the effect on supply schedules, and costs to the Government, if the contractor should default at a later date and be unable to perform by reason of inadequate financing.

(c) In determining eligibility of small business concerns, the factor of ready availability of alternative sources will not be considered, and the paragraph of the form of certificate of eligibility pertaining to alternative sources will be deleted in cases of small business concerns. In such cases the fact that the particular items or services involved are being procured under or pursuant to a contract of a Military Department is considered adequate to support and require the finding that the materials or services involved are deemed essential to the national defense. However, this does not mean that the certificate of eligibility should be provided automatically for small business concerns, or that any less care and diligence should be exercised for determining eligibility for small business cases than for other cases. See paragraph (d).

(d) It is necessary in all cases, whether or not involving a small business concern, that, in considering issuance of a certificate of eligibility, emphasis be placed on the factors of the contractor's technical ability management competence and reliability, plant capacity and facilities, and generally on his ability to perform satisfactorily if adequate financing is provided. If these factors are not favorable, the certificate of eligibility should not be issued. See §§ 163.23 and 163.24.

(e) With regard to contracts existing at the time of request for the certificate of eligibility, the percentage of guarantee requested by a financing institution is not a factor to be considered in connection with issuance of the certificate.

(f) In all cases, the supporting data furnished to the contract financing office should be sufficient to support the findings made in the certificate of eligibility. This data should contain available information pertinent to the matter of ability to perform satisfactorily, including known information as to past performance and available information on the relation of the contractor's operations to supply schedules, and available pertinent information on other practical factors such as comparative prices and the time and expense that would be involved if reletting the contracts should become necessary (§ 163.28 does not apply). All of this information, including particularly an indication as to whether or not the contractor is considered an important source for materials or services, is necessary and important for consideration by the contract financing offices in determining the ultimate question whether, on their evaluation of all the circumstances of particular cases (including the contractor's financial condition and financial record), the authorization of a guarantee would be prudent and in the best interests of the Government. When the certificate of eligibility is not furnished, the facts and reasons leading to declination of the certificate should be furnished.

(g) In those cases of subcontracts, where the prospective borrower is financially weak in relation to the financial condition of his defense contract customer, and the interests of the Government would be fostered by the making of progress payments to the subcontractor by his customer, it is appropriate that steps be taken, by coordinated effort of the procuring activity and the contract financing office, to arrange to the extent practicable for such progress payments to the subcontractor by his customer. By such means, in appropriate cases, the guaranteed loan may become unnecessary, or necessary in lesser amount, and the risks of loss are borne wholly or partly by the prime contractor or subcontractor responsible for selection of the prospective borrower as his subcontractor.

(h) If materially adverse information of any character concerning the prospective borrower is known to a procuring activity, such materially adverse information should be fully reported to the interested contract financing office. However, procuring activities are not expected to make any special investigation of the prospective borrower's financial condition in connection with applications for loan guarantees, as reports concerning financial condition of prospective borrowers are made by the Federal Reserve Banks.

(i) When certificates of eligibility are requested within a Department, or by one Department from another Department, reply will be made as promptly as possible, on a priority basis, as delays in financing may retard contract performance. Ordinarily, requests for certificates of eligibility, and pertinent data, will be made only with respect to those contracts deemed of material consequence under the circumstances of particular cases.

(j) In cases involving several contracts or subcontracts, including contracts or subcontracts relatively minor in relation to dollar amounts of other contracts involved, the processing of certificates of eligibility should not be delayed pending determinations concerning the relatively minor contracts. When any office within a procuring activity has on hand information concerning the substantial preponderance of amount of contracts with which it is concerned, its action concerning the certificate of eligibility should be completed without awaiting information on which to make determinations or recommendations concerning minor contracts. Basically, in situations involving numerous contracts, the determination as to eligibility should be founded upon the need of the prospective borrower's operation in the defense production program, and if his operation is considered necessary for performance of substantial preponderance of his contracts, it usually should be unnecessary to make determinations concerning the eligibility of any particular minor contracts.

(k) When a contracting officer or other person within a procuring activty responsible for processing requests for certificates of eligibility has reason to believe that an application for loan guarantee has been filed or is about to be filed, relating to a contract or subcontract within his cognizance, he should, without awaiting request for a certificate of eligibility or request for information bearing on issuance of a certificate of eligibility, initiate the completion and transmittal of such information and certificate to the appropriate office within his Department, for forwarding to the contract financing office within the Department.

Subpart D—Advance Payments

§ 163.50 Scope of subpart; references.

This subpart covers policy and procedure for advance payments on prime contracts, including advance payments on subcontracts under all types of prime contracts. It applies to all advance payments hereafter authorized pursuant to any legislation or other authority, except as provided in § 163.68a. It is to be applied in conformity to the policies stated in Subpart B of this part. Sections 163.1, 163.2, 163.3, 163.4, 163.5, 163.8, 163.9, 163.12–2 and 163.12–3 are also applicable to advance payments.

§ 163.50–1 Advance payments on subcontracts.

The policies, standards and procedures of Subpart D of this part are applicable to advance payment to subcontractors under all prime contracts, including fixed-price types and cost-reimbursement types of prime contracts. For the prime contractor to receive advances for or to be reimbursed for such advance payments, it is required that the prime contract make provision for advance payments conforming to this Part, with appropriate provision for advance

payments by the prime contractor to subcontractors or suppliers. See § 163.64–2(q).

§ 163.51 Types of contracts that may have advance payments.

Advance payments may be made on any approved type of contract, as defined in § 1.201–4.

§ 163.52 Advance payments in addition to progress payments.

Where necessary and in accordance with these regulations, advance payments may be authorized in addition to progress payments on the same contract. See § 163.77.

§ 163.53 Interest.

(a) Interest will be charged on all advance payments hereafter authorized, at the rate of five percent per annum on the unliquidated balance: *Provided, however,* Advance payments may be approved without interest when in connection with nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work, or on nonprofit contracts in the dependents' medical care program, or on contracts solely for the management and operation of Government-owned plants, or, in unusual cases when specifically authorized by the Under or Assistant Secretary responsible for the Comptroller function. In this connection, contracts for acquisition of facilities at cost, for Government ownership, in combination with or in contemplation of supply contracts or subcontracts, will be treated as ordinary profit contracts requiring interest on advance payments.

(b) Contracts with interest-free advance payments, hereafter authorized, should provide that the contractor will charge interest at the rate of five percent per annum on sub-advances or down payments to subcontractors, and that interest charged on such sub-advances or down payments will be credited to the account of the Government. However, interest need not be charged on sub-advances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research, or development work.

(c) Interest on advance payments will not be allowed as a cost under any cost-reimbursement type contract nor cost-reimbursement subcontract thereunder, and no such contract or subcontract may provide or be amended to provide for allowance of such interest as an item of cost.

§ 163.54 Standards; amounts; need.

(a) Advance payments should be used sparingly and care should be taken to see that advances outstanding are sufficient for but do not exceed the actual reasonable requirements for the contracts. The amount of the advance payment in any case should be based upon an analysis of the cash flow required under the contract, and as a general rule should not exceed the interim cash needs arising during the reimbursement cycle.

(b) Generally, except for (1) nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work, and (2) contracts solely for the management and operation of Government-owned plants, advance payments should not be authorized unless no other means of adequate financing is available to the contractor (not including loans or credit (i) at excessive interest rates or other exorbitant charges, or (ii) from agencies of the Government outside the Department of Defense), and the amount of the authorization is predicated upon use of the contractor's own working capital to the extent possible.

§ 163.55 Statutory requirements.

The authorizing statutes (§ 163.8) apply equally to negotiated contracts and to contracts awarded or to be awarded by formal advertising. It is required for all advance payments, that—

(a) The contractor give adequate security; (§ 163.63)

(b) The advance payments shall not exceed the unpaid contract price;

(c) The making of advance payments is in the public interest, as determined by the authorized official concerned (§§ 163.56 and 163.56–1), when the action is pursuant to the authority of Title 10, U.S. Code, Section 2307;

(d) The making of advance payments will facilitate the national defense, as determined by the authorized official concerned (§§ 163.56 and 163.56–1), when the action is pursuant to Pub. Law 85–804, and Executive Order No. 10789.

§ 163.56 Responsibility; delegation of authority.

Except as provided in § 163.56–1 the responsibility and authority for making findings and determinations with respect to advance payments, and in each case for approval of contract provisions for advance payments, or for approval of the terms and conditions thereof, shall be in the Under or Assistant Secretary responsible for the comptroller function in each Military Department, or the authorized deputy of either of them. The Government may not be committed, in any manner, directly or indirectly to make an advance payment without the approval of the Under or Assistant Secretary responsible for the comptroller function, or the authorized deputy of either of them (or in appropriate cases, of a person to whom advance payment approval authority has been delegated in accordance with § 163.56–1), and no procurement involving advance payments may become final until such approval is obtained.

§ 163.56–1 Delegation of authority.

The authority in each case to make findings and determinations with respect to advance payments and to approve contract provisions for advance payments, or to authorize the terms and conditions thereof, may be delegated within each Department no further than, to the Comptroller of the Army (and an alternate within his office) in the Department of the Army, to the Assistant Comptroller, Accounting and Finance (and an alternate within his office) in the Department of the Navy, and to the Deputy for Contract Financing to the Assistant Secretary (Financial Management) of the Air Force (and an alternate responsible to such Deputy for Contract Financing). However, to the extent deemed necessary or prudent and efficient under exceptional circumstances, further delegations of this advance payment authority may be made with the approval of the Assistant Secretary of Defense (Comptroller).

§ 163.57 Public Law 85–804: formally advertised contracts.

(a) Pursuant to Public Law 85–804, and Executive Order No. 10789, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force are authorized to make advance payments under contracts heretofore or hereafter made, without regard to other provisions of law relating to contracts, including advance payments under contracts awarded on competitive bids after formal advertising, and to amend such contracts to provide for advance payments.

(b) Pursuant to the above statute and executive order (as well as 10 U.S.C. 2307) and subject to these regulations, advance payments may be granted at or after awards of contracts made on competitive bids after formal advertising (as well as on negotiated contracts) notwithstanding the absence of provision for or with regard to advance payments in the invitations for bids. Bids will be rejected if they are conditioned, qualified, or limited in such way that binding awards can be made only with provision for advance payments. Bids shall not be treated as nonresponsive because they contain, or are accompanied by or supplemented by request for advance payments or other indication that advance payments are desired or needed, so long as the advance payment aspect is not a condition, qualification or limitation of the bid. In the cases mentioned in the previous sentence, or if the need for advance payments becomes apparent in the course of inquiry as to whether the necessary funds will be available for performance by the prospective contractor, (1) the award may be made with provision for advance payments, in conformity with these regulations, or (2) the award may be made without provision for advance payments if the prospective contractor is determined to be a responsible contractor and advance payments are considered not necessary, or (3) the award may be denied because funds for performance are not otherwise available to the prospective contractor and the making of advance payments has been declined in accordance with these regulations.

§ 163.57–1 Special contract provisions.

All contracts providing for advance payments under the authority of the above-cited Act (P.L. 85–804) and Executive Order shall—

(a) Make reference to the Act and Executive Order; and

(b) Include appropriate clauses required by the Act and Executive Order (§ 17.102 of this chapter), or by other

applicable regulations. (See §§ 7.203–7, 7.402–7 of this chapter).

§ 163.57–2 Data.

Complete data shall be maintained by each Department as to all contracts and amendments to contracts relating to advance payments made pursuant to the above-cited Act (Pub. Law 85–804) and Executive Order.

§ 163.58 Uses of advance payments.

Advance payments are last in the general order of preferences stated in § 163.22. Subject to the provisions of this part, advance payments are considered useful and appropriate for (a) nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work (§ 163.54), (b) contracts solely for the management and operation of Government-owned plants (§ 163.54), (c) contracts for acquisition of facilities at cost, for Government ownership, (d) contracts involving operations so remote from a financing institution that the financing institution could not be expected to provide suitable administration of a guaranteed loan, (e) contracts of such highly classified nature that the Department considers it undesirable for national security to permit assignment of claims under the contract, (f) rare but essential contracts of those contractors, unusually weak or overextended financially, in those cases in which performance may be better fostered and risks of financial loss most effectively minimized by very close control of funds and supervision of performance by personnel of the Department concerned, (g) contracts for the financing of which a financing institution will not (1) assume a reasonable portion of the risks under a guaranteed loan, or (2) provide funds except at excessive interest rates or other exorbitant charges, and (h) exceptional cases in which the utilization of advance payments will be more beneficial to the interests of the Government than any other available method of financing. Circumstances will occur, especially on contracts with small-business concerns, in which advance payments will be more beneficial to the interests of the Government and more suitable to the situation of the contractor than other methods of contract financing. If, incident to a bid or proposal, or after award of a contract, an otherwise qualified contractor is found to require advance payments, there should be no hesitation in recommending to higher authority that advance payments be established.

§ 163.59 Standards for advance payment determinations; all contracts.

It is not required for the granting of advance payments that the contractor be the sole or only source or prospective source for the required supplies or services. Important practical factors include comparative prices, urgency of supply schedules, and the time and expense involved in arranging other sources or in reletting contracts. The governing principles and standards for decision as to whether to make or approve the necessary determinations for advance payments are those set forth in this section and §§ 163.15 through 163.26, 163.54, 163.55, 163.57 and 163.58. Affirmative recommendations should be made in favor of granting advance payments when (a) advance payments are necessary to supplement other funds or credit available to a contractor or prospective contractor, (b) the contractor or prospective contractor is otherwise qualified as a responsible contractor (§§ 1.903–1 and 2.407 of this chapter and § 163.24); (c) there will be a benefit to the Government from performance prospects or other practical advantages, and (d) the case is within one or more of the categories described in § 163.58. These recommendations should be approved unless the responsible contract financing office (§ 163.26), or the Under or Assistant Secretary or other official concerned (§ 163.56), considers that under all the relevant circumstances the making of advance payments would be unreasonable or imprudent or would involve undue risks of monetary loss to the Government, or would otherwise fail to conform to this part.

§ 163.60 Findings, determinations, and authorization.

The following is the standard text of findings, determinations, and authorization (§ 163.62(f)) for use in establishing advance payments.

FINDINGS, DETERMINATIONS, AND AUTHORIZATION FOR ADVANCE PAYMENTS

FINDINGS

1. I hereby find that:

a. The ----------
(Procuring Activity)

and ---------- have entered
(Contractor)

(propose to enter) into negotiated (formally advertised) Contract No. ----------, (dated ----------).

[Summary of significant facts concerning contract]

b. Advance payments (in an amount not to exceed $------ at any time outstanding) (in aggregate amount not exceeding $------, less the aggregate amounts repaid, or withdrawn by the Government) are required by the contractor in order to perform under the contract. Such amount does not exceed the unpaid contract price, nor the estimated interim cash needs arising during the reimbursement cycle.

c. The advance payments are necessary for prompt and efficient performance of the contract, which will be of benefit to the Government.

d. The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for the advance payments. These include provision that all payments will be deposited in a special bank account, and that the United States will have a paramount lien upon (1) the credit balance in the special bank account, (2) any supplies contracted for, and (3) any material or other property acquired for performance of the contract. (Advance payment bond is required.) Such security is deemed to be adequate.

e. Within the meaning of applicable regulations, no means of adequate financing other than by advance payments are available to the contractor, and the amount designated above is predicated upon the use of the contractor's own working capital to the extent possible in performing the contract.

f. The contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (,) (research and development) work, without profit to the contractor.

g. The contract is solely for the management and operation of a Government-owned plant.

h. The following unusual facts and circumstances favor the making of advance payments to the contractor without interest:

[Recitation of pertinent facts and circumstances]

DETERMINATIONS

2. Upon the basis of the foregoing findings, I hereby determine that the making of the proposed advance payments with interest of five per cent per annum on the unliquidated balance of such advance payments (without interest except as provided by the proposed advance payment clause) (is in the public interest) (will facilitate the national defense).

AUTHORIZATION

3. Such advance payments, of which (the amount at any one time outstanding) (the aggregate amount, less the aggregate amounts repaid, or withdrawn by the Government), shall not exceed $------, are hereby authorized pursuant to 10 U.S.C. 2307 (The Act of August 28, 1958, Pub. Law 85–804, 72 Stat. 972, and Executive Order No. 10789), upon (terms and conditions substantially as contained in the proposed advance payment clause of which copy (or outline) is annexed hereto) (the following terms and conditions:)

(All prior advance payment authorizations with respect to Contract No. ------ are hereby superseded.)

[Name typed]

[Title of authorized official]

INSTRUCTIONS

1. On requests for advance payment provisions, this document will be prepared, in final form for signature of an authorized official (§ 163.56), by such office as may be designated by the procedures of each Military Department. It will include such of the paragraphs set out above as are appropriate. (See below.)

2. Words and expressions in parentheses and blank spaces in the above paragraphs indicate choices of language, depending upon the facts pertinent to a particular request. Forms will not be prepared in advance which include all of the above paragraphs and all of the alternate language. Each "Findings, Determinations, and Authorization" will be prepared separately to include only those paragraphs and those words (including statutory references) which are pertinent to the particular request.

3. Each such "Findings, Determinations, and Authorization" must include paragraphs 1.a., 1.b., 1.c., 1.d., 2 and 3. Paragraph 1.e. will not be included in the case of nonprofit contracts with a nonprofit educational or research institution for experimental, research and development work, or in the case of contracts solely for the management and operation of Government-owned plants. Paragraph 1.f., 1.g. or 1.h., as appropriate, will be included if the advance payments are to be made without interest to the contractor. The last sentence of paragraph 3 will be included if any advance payments have previously been authorized for the contract. The numbering and lettering of the paragraphs in the completed "Findings and Determinations" will then run consecutively, based on the paragraphs actually used.

4. Modifications to adapt to special facts and circumstances are permitted.

5. 10 U.S.C. 2307 normally will be the statutory authority cited for the advance payment. The Act of August 28, 1958, and Executive Order No. 10789 are reserved for extraordinary situations not falling within the purview of 10 U.S.C. 2307.

§ 163.61 Application for advance payment.

The contractor's application for advance payment, whether incident to the making of a contract or by way of amendment or supplemental agreement for advance payments under an existing contract, may be in the form of a letter request or other writing. The application should refer to the contract or proposed contract under which advance payments are requested, and should include or be accompanied or supported by:

(a) Cash flow forecast (§§ 163.28(f), 163.28–1 and 163.28–2) (limited to estimated cash flow for the contract or contracts to be financed by advance payments when the contracts are of the kinds mentioned in § 163.58(a) or § 163.58(b));

(b) Proposed amount of advance payments;

(c) Name and address of bank suggested as depository for the advance payment special account;

(d) Except for contracts mentioned in § 163.58 (a) and (b) and description of efforts made to obtain private financing, including guaranteed loan; and

(e) Such other information and data (§ 163.28) as may be appropriate under the circumstances of the case for the purposes outlined in § 163.28 (of which, ordinarily, information concerning reliability, technical capability, and adequacy of accounting system and controls should be sufficient for contracts mentioned in § 163.58 (a) and (b).

§ 163.62 Action by contracting officer; approval.

After such investigation as may be appropriate, and analysis of the request and information submitted by the contractor, the contracting officer should transmit to the appropriate office within his Department, with such number of copies as may be required within the Department:

(a) Date and identifying symbol of the approval of the award, citation of the appropriation available, type of contract, dollar amount of contract, the items to be supplied, and schedule of deliveries or performance, status of performance and deliveries, if any, contemplated profit or fee, and (unless excepted by instructions of the Department concerned) copy of contract, if available.

(b) The request and information furnished by the contractor;

(c) Report of investigation, including past dealings with the contractor, and comment on the character and responsibility of the contractor, technical ability, and plant capacity;

(d) Comment on (1) the need for the advance payments for performance of the contract, and (2) the benefits to the Government from the contemplated contract performance;

(e) Proposed advance payment contract provisions or supplemental agreement, including proposed security provisions, unless those are to be provided by the contract financing office or other office;

(f) The appropriate findings, determination and authorization (§ 163.60) (for signature by the approving authority), unless those are to be provided by the contract financing office or other office;

(g) Recommendation that the advance payment be approved; and

(h) Justification of proposal, if any, for waiver of interest charge (§ 163.53).

§ 163.62–1 Action by contracting officer, disapproval.

If the contracting officer determines that the requested advance payment should be disapproved, the contractor's request, information submitted, report of investigation (if any), and statement of reasons for adverse determination should be sent forward immediately to the Army Comptroller, in the Department of the Army, to the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and to the Deputy for Contract Financing to the Assistant Secretary (Financial Management) of the Air Force. This information may be useful in connection with existing or prospective arrangements for other financing, and for such further action as may be appropriate to enhance uniform application of this part.

§ 163.63 Security; supervision; covenants.

(a) The advance payment agreement, under any applicable statute, should provide for deposit of all payments into special bank accounts and should include suitable covenants to protect the Government's interest. Advance payments under such authorizations should be limited to the contractor's financial needs, and withdrawals from the special bank accounts provided therefor should be closely supervised. The terms governing advance payments should include as security, in addition to or in lieu of the requirements for an advance payment bond or other security, provision for a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for, upon the credit balance in any special account in which such payments may be deposited, and upon the material and other property acquired for performance of the contract, except to the extent that the Government has valid title thereto.

(b) Because of the variations in circumstances of individual cases, no fixed rule can be prescribed for determining adequacy of security in a particular case. The minimum security will be that required by the provisions of approved contract forms, supplemented by such further provisions and arrangements, if any, as may be considered appropriate for the protection of the Government under the circumstances of each case. Advance payment bonds usually will not be required. When and to the extent deemed necessary and appropriate special security provisions will be required, such as, for example, personal or corporate endorsements or guarantees, pledges of collateral, subordination or stand-by of other indebtedness, and controls or limitations on profit distributions, salaries, bonuses or commissions, rentals and royalties, capital expenditures, creation of liens, debt retirement or stock retirement, and creation of additional obligations.

§ 163.64 Forms of contract provisions and supplemental agreements.

The approved forms for agreement covering advance payment special bank accounts, and approved forms of advance payment contract provisions and supplemental agreements for use in connection with the several types of approved contracts are set out below. Variations from the approved forms of contract provisions for advance payments should be made only when necessary in exceptional circumstances, with the approval of the person having authority to approve the particular advance payment contract involved. With regard to variations, it is recognized, for example, that there may be exceptional circumstances in which it will be beneficial to the Government to modify § 163.64–1(b) and the second sentence of § 163.64–2.

§ 163.64–1 Forms of agreement for special bank account.

For all advance payments substantially the following form of agreement will be used for the special bank account or accounts:

AGREEMENT FOR SPECIAL BANK ACCOUNT

Agreement entered into this _____ day of _____, 19__, between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this Agreement, _____, a corporation under the laws of the State of _____, hereinafter called the Contractor, and _____, a banking corporation under the laws of _____, located at _____, hereinafter called the Bank.

RECITALS

(a) Under date of _____, 19__, the Government and the Contractor entered into Contract(s) No. _____, or a Supplemental Agreement thereto, providing for the making of advance payments to the Contractor. Copy of such advance payment provisions has been furnished to the Bank.

(b) Said Contract or Supplemental Agreement requires that amounts advanced to the Contractor thereunder be deposited in a Special Bank Account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U.S.C. 264), separate from the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated "_____ (Name of Contractor) _____ Special Bank (Department) Account."

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

(1) The Government shall have a lien upon the credit balance in said account to secure the repayment of all advance payments made to the Contractor, which lien shall be superior to any lien or claim of the Bank with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the Administering Office designated in the advance payment contract mentioned above, or from the duly authorized representative of the Contracting Officer or the Administering Office, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Bank through the Contracting Officer upon Department of the _____ stationery and purporting to be signed by, or by the direction of _____ or his duly authorized representative, shall, in so far as the rights, duties and liabilities of the Bank are concerned, be conclusively deemed to have been properly issued and filed with the Bank by the Department of the _____.

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, checks, correspondence or documents appertaining thereto. Such books and records shall be preserved by the Bank for a period of six (6) years after the closing of this Special Bank Account.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify_____

_____

(Administering Office)

In witness whereof the parties hereto have caused this agreement to be executed as of the day and year first above written.

(Signatures and Official Titles)

§ 163.64–2 Advance payment provisions.

Approved contract provisions for advance payments, with directions for use where appropriate, follow:

(a) *Amount of advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (i) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (n)(4) below) as to the financial necessity therefor; (ii) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (n)(1) below; (iii) without a properly certified invoice or invoices.

(b) *Special bank account.* Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (n)(2) below. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer, or such other person or persons as he may designate in writing (hereinafter called the "Countersigning Agent").

[When considered not reasonably necessary for the protection of the Government, the countersignature requirement may be waived for contractors who are financially strong, with good performance records and good past experience with regard to contract cost disallowances. In such cases, the following sentence may be added to paragraph (b)]:

Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

(c) *Use of funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for direct materials, direct labor, and administrative and overhead expenses required for the purposes of this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of Part 15 of Subchapter A), or for the purpose of reimbursing the Contractor for such payments, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

[In the case of a cost-reimbursement contract, insert the following paragraph instead of paragraph (c) above.]

(c) *Use of funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost as defined in Article _____ of this contract, or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(d) *Return of funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advances previously made and liquidated) in excess of the amount specified in (n)(1). In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to (_____ percent) of the stated contract price of $_____, or such lesser amount to which the contract price may have been reduced, plus (i) increases, if any (not resulting from any provisions for price redetermination or escalation), in the above stated contract price not exceeding, in the aggregate $_____,

(Insert here not more than 10 percent of stated contract price above)

and (ii) all increases in contract price resulting from any provision for price redetermination or escalation, the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract, all advance payments and interest charges have not been fully liquidated, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

[The percentage stated above should not be more than 95 percent. In appropriate cases, where more rapid liquidation is desirable, the following sentence may be inserted at the beginning of paragraph (e), with appropriate percentages specified]:

To liquidate the principal amount of any advance payment made to the Contractor hereunder, there shall be deductions of _____ percent from any and all payments made by the Government under the contracts involved.

[In case of a cost-reimbursement contract, insert the following paragraph instead of paragraph (e) above.]

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to the total estimated cost of $_____ for the work under this contract (not including fixed fee, if any), or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate, $_____,

(Insert not more than 10 percent of estimated costs stated above)

(including, without limitation, reimbursable costs incident to termination for the convenience of the Government as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges, until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract all advance payments and interest charges have not been fully liquidated, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(f) *Interest charge.* If required in paragraph (n)(3) below and at the rate therein specified, the Contractor shall pay interest to the Government upon the daily unliquidated balance of advance payments made under this contract. If the full amount of such interest is not paid by deduction or otherwise upon the completion or termination of this contract, the deficiency shall be paid by the Contractor to the Government upon demand. Interest at the rate specified in paragraph (n)(3) shall be computed at the end of each calendar month in the manner herein specified on the average daily balance of the principal of the advance payments outstanding. Notwithstanding monthly computation, interest shall be computed for the actual number of days involved, on the basis of a 365 or 366 day year as the case may be. In determining such balance, (1) charges on account of the advance pay-

ments to the Contractor shall be made as of the date of the checks therefor, and (2) credits arising from deductions from payments to the Contractor shall be made as of the date of issue of the checks for such payments. [For cost-reimbursement contracts, use, instead of (2) above: (2) credits resulting from deductions from cost reimbursements shall be made upon the approval of the vouchers by the Disbursing Officer, as of the dates respectively upon which the Contractor presents to the Contracting Officer or his duly authorized representative full and accurate data for the preparation of each such voucher, which date as to each such voucher shall be certified by the Contracting Officer or his duly authorized representative.] Also, in determining such balance, credits arising from cash repayments to the Government by the Contractor shall be made as of the date the checks therefor are received by the Disbursing Officer. As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments otherwise due to the Contractor under the contracts on which advance payments have been made. [For cost-plus-fixed-fee contracts, use the following, instead of the next preceding sentence: As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments on account of the fixed fee which may be made to the Contractor from time to time under the Contract.] In the event the accrued interest exceeds any such payment, the excess of such interest shall be carried forward and deducted from subsequent payments on account of the contract price or fixed fee as the case may be. The interest shall not be compounded, and shall, subject to the provisions of paragraph (k) hereof, cease to accrue with respect to each contract upon which advance payments are outstanding hereunder, upon termination of such contract for other than the fault of the Contractor, or upon the date found by the Contracting Officer to be the date upon which the Contractor completed his performance under the contract.

(g) *Bank agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684, as amended; 12 U.S.C. 264).

(h) *Lien on special bank account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder together with interest charges thereon.

(i) *Lien on property under contract.* Any and all advance payments made under this contract, together with interest charges thereon, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify by marking or segregation all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on its books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(j) *Insurance.* The Contractor represents and warrants that it is now maintaining with responsible insurance carriers, (i) insurance upon its own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (ii) adequate insurance against liability on account of damage to persons or property; and (iii) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, it will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, sub-assemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to its insurance as the Administering Office may from time to time require.

(k) *Default provisions.* Upon the happening of any of the following events of default, (i) termination of this contract by reason of fault of the Contractor (ii) a finding by the Administering Office that the Contractor (1) has failed to observe any of the covenants, conditions or warranties of these provisions or has failed to comply with any material provision of this contract, or (2) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (3) has allocated inventory to this contract substantially exceeding reasonable requirements, or (4) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (iii) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor; (iv) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account; or (v) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further withdrawals from the Special Bank Account and withhold further payments on this contract. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances; (*a*) withdraw all or any part of the balance in the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and apply such amounts in reduction of advance payments then outstanding hereunder and in reduction of any other claims of the Government against the contractor; (*b*) charge interest on advance payments outstanding during the period of any such default at the rate of six percent (6%) per annum; (*c*) demand immediate repayment of the unliquidated balance of advance payments hereunder; or (*d*) take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

(l) *Prohibition against assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(m) *Information—access to records.* The Contractor shall furnish to the Administering Office signed or certified balance sheets and profit and loss statements monthly, or at such other intervals as may be required, together with a monthly report on the operation of the Special Bank Account in prescribed form, and such other information concerning the operation of the Contractor's business as may be requested. The Contractor shall afford to authorized representatives of the Government proper facilities for inspection of the Contractor's books, records and accounts.

(n) *Designations and determinations—*

(1) *Amount.* The aggregate amount of the ments at any time outstanding hereunder shall not exceed $_____. [or, alternatively:]

(1) *Amount.* The aggregate amount of the advance payments to be made hereunder (less the aggregate amounts paid or withdrawn pursuant to paragraph (d) shall not exceed $_____.

(2) *Depository.* The bank designated for the deposit of payments made hereunder shall be _____.

(3) *Interest charge.* Interest shall be charged in the manner provided herein at the rate of five percent per annum. [In the case of advance payments made without interest, insert the following:] No interest shall be charged for advance payments made hereunder, except as provided for in paragraph (k)(*b*). The Contractor shall charge interest at the rate of five percent per annum on sub-advances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on sub-advances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research or development work.

(4) *Administering Office.* The office administering advance payments is designated as _____.

(o) *Other security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the Administering Office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the Administering Office, to the extent that such additional security is available.

(p) *Representations and warranties.* To induce the making of the advance payments, the Contractor represents and warrants that:

(1) The balance sheet, the profit and loss statement and any other supporting financial statements, hereto furnished to the Administering Office, fairly reflect the financial condition of the Contractor at the date shown on said balance sheet and the results of the operation for the period covered by the profit and loss statement, and since said date there has been no materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the above statements.

(3) The Contractor, apart from liability resulting from the renegotiation of defense production contracts, has no contingent liabilities not provided for or disclosed in the financial statements furnished to the Administering Office.

(4) None of the provisions herein contravenes or is in conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this contract.

(6) None of the assets of the Contractor is subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor to the Administering Office. There has been no assignment of claims under any contract affected by these advance payment provisions, or if there has been any assignment, such assignments have been terminated.

(7) All information furnished by the Contractor to the Administering Office in connection with each request for advance payments is true and correct.

(8) These representations and warranties shall be continuing, and shall be deemed to have been repeated by the submission of each invoice for advance payments.

(q) *Subadvances.* Substantially the following provision should be included in the contract when subadvances are contemplated:

Subject to the prior written approval of the Administering Office, funds from the Special Bank Account may be used by the Contractor to make advance payments or down payments to subcontractors and materialmen in advance of performance by the subcontractor or materialman. Such subadvances shall not exceed _____ percent of the subcontract price or estimated cost as the case may be, and the subcontractors or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is required by the Administering Office, covenants in subcontracts, expressly made for the benefit of the Government providing for a Special Bank Account for the subadvance, with Government lien thereon, and providing for a Government lien, paramount to all other liens, on all property under such subcontract, and imposing upon the subcontractor and the depository bank substantially the same duties and giving the Government substantially the same rights as are provided herein (and in the Agreement for Special Bank Account supplementary hereto) between the Government, the Contractor and the Bank, may be considered as adequate security for such subadvance.

(r) *Covenants.* The following are examples of some special provisions (subject to modification to adapt to the circumstances of individual cases) that may be utilized when and to the extent deemed appropriate in particular cases.

During the period of time that advance payments may be made hereunder and so long as any such advance payments remain unliquidated, the Contractor shall not, without the prior written consent of the Administering Office—

(1) Mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the contractor now owned or hereafter acquired by it, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any such stock, except as required by sinking fund or redemption arrangements reported to the Administering Office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or Governmental authority, except direct obligations of the United States;

(6) Make any advance or loan to or incur any liability as guarantor, surety, or accommodation endorser for any other firm, person, or corporation;

(7) Permit a writ of attachment or any similar process to be issued against its property without procuring release thereof or bonding the same within 30 days after the entry of the writ of attachment or any similar process;

(8) Pay any salaries, commissions, bonuses, or other remuneration in any form or manner to its directors, officers, or key employees in excess of existing rates of payments or of rates provided in existing agreements, in connection with which notice has been given to the Administering Office, or accrue such excess remuneration without first obtaining an agreement subordinating the same to all claims of the Government hereunder, or employ any person at a rate of compensation in excess of $_____ per annum;

(9) Make any substantial change in management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of its business or engage in any transaction outside the ordinary course of its business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;

(12) Create or incur indebtedness for borrowed money or advances other than advances to be made hereunder, except as specified herein;

(13) Make or covenant itself to make capital expenditures exceeding in the aggregate $_____;

(14) Permit its net current assets, calculated in accordance with generally accepted accounting principles, to become less than $_____; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent herein provided.

§ 163.65 Pooled advance payment; general.

Advance payments are sometimes useful and convenient for financing the performance of more than one contract, under a single advance payment agreement. Such an agreement is called an advance payment pool agreement. An advance payment pool agreement may be entered into as a separate agreement for advance payments, or may be incorporated initially in a contract for supplies or services, or added to such a contract by amendment or supplement. Advance payment pool agreements are especially convenient for the financing of nonprofit contracts with nonprofit educational or research institutions for experimental, or research and development work, when several contracts or a series of contracts require financing by advance payments. When advance payments are appropriate, pooled advance payments may also be used to finance performance of other types of contracts held by a single contractor. They may be established without regard to the number of appropriations involved, and regardless of the fact that contracts affected may be those of more than one purchasing office, procuring activity, or Military Department. If more convenient or otherwise preferable, there also may be more than one advance payment pool agreement in force at the same time with a single contractor, designed separately to finance contracts of the Military Departments respectively concerned, or of one or more procuring activities respectively. Advance payment pool agreements may be established under either or both of the statutes mentioned in paragraph § 163.8.

§ 163.65–1 Distinction between pool contracts and designated pool contracts.

An advance payment pool agreement may cover a broad area of a contractor's financial needs rather than piecemeal segments related to separate contracts. A pool arrangement is based upon the contractor's financing requirements for a group of Government contracts to be performed at the same time. The monetary requirements for the group of contracts are considered in fixing the maximum dollar amount for the advance payment pool agreement. Advances are not made on each separate contract, but can be made on and charged against one or more large, long term contracts, so as to supply the monetary requirements for smaller contracts included in the advance payment pool. A contract to which the advance payments are charged is called a designated pool contract. All other contracts linked to the pool agreement are called the pool contracts.

§ 163.66 Advance payment pool agreements; special features.

The principal features distinguishing an advance payment pool agreement from an advance payment provision affecting only a single contract are:

(a) The advance payment pool agreement specifies a "designated pool contract" or two or more "designated pool contracts," and provides for substitution from time to time of new or different contracts as the "designated pool contract(s);"

(b) When there is only one designated pool contract, all advance payments are charged against that designated pool contract. When there is more than one designated pool contract, each advance payment made is charged against one of the designated pool contracts, except that when the foregoing is not possible, the advance must be allocated specifically by amounts to two or more designated pool contracts;

(c) Liquidation of advance payments is geared to the stated contract price, or total estimated cost, if applicable, of the "designated pool contract(s);"

(d) The advance payment pool agreement either lists other contracts as "pool contracts," or provides for inclusion of other contracts as "pool contracts" by reference to the advance payment pool agreement in such contracts, and provides for the subsequent inclusion of other contracts as "pool contracts;"

(e) All payments under all of the pool contracts, including designated pool contracts, are made into the advance payment Special Bank Account;

(f) The appropriate provisions of the advance payment clause are made applicable to all pool contracts, including the designated pool contracts.

§ 163.67 Liquidation; designated pool contracts; administering office.

It is imperative for each advance payment pool that effective arrangements be made to insure that there will not be overpayments, and that timely liquidation is accomplished against each designated pool contract. For each pool agreement, there must be a single administering office, and to the greatest extent possible there should be only one finance office or disbursing office for all of the contracts affected by the pool, especially those contracts which are designated pool contracts.

§ 163.68 Pooled advance payments; understandings.

Pooled advance payments affecting contracts of more than one Military Department necessarily require agreement by those concerned with a given case. There has not been sufficient experience with pooled advance payments to permit full coverage by these regulations. However, certain understandings which have been reached on some of the problems involved are set out below, for the guidance of all concerned.

(a) There should be no single exclusive procedure for establishing an advance payment pool agreement. Requests for pooled advance payments may be initiated at the level of the contracting officer, or chief of a procuring activity, or at Departmental headquarters.

(b) When the advance payment pool is to affect contracts of more than one Military Department, the authorizing Department ordinarily would be the one having preponderant interest in the contractor's backlog of unfinished contracts, along the lines of § 163.40. Possible exceptions to the preponderance principle are cases in which it would be more convenient to use a relatively large long term contract of a non-preponderant Department as the "designated pool contract," or where it is fairly expected that preponderance will shift during the term of the advance payment pool agreement.

(c) Inclusion of contracts of another Military Department in an advance payment pool arrangement, either as "pool contracts" or as a "designated pool contract," requires approval of the contract financing office of each Department concerned. This may be accomplished by concurrence in provisions of the pool agreement permitting inclusion of contracts of another Department, or by separate approvals in connection with the addition of such contracts to the advance payment pool.

(d) Situations may occur in which the remaining payments available on all pool contracts are not sufficient to liquidate outstanding advance payments. These circumstances will not affect the normal practice by which the net amount payable by or to the Government on each separate contract is determined by offsetting mutual debits and credits of the Government and the contractor respectively arising under each separate contract. For advance payments that remain outstanding after adjustment for debits and credits under each separate contract, amounts realized from the special pool bank account, from property covered by the advance payment lien, and from any other recoveries available for liquidation of advance payments should be applied first to liquidation of the remaining outstanding advance payments, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively. If there is only one open designated pool contract, the entire advance payment loss should fall on that contract. If there is more than one open designated pool contract on which advance payments remain outstanding after adjustment for debits and credits under each separate contract, the advance payment loss (insofar as contracts of two or more Military Departments are involved) will fall on all of those designated pool contracts, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively.

(e) Records will not be maintained to show separately the amount of advance payments invested in each one of the separate pool contracts. The keeping of such records is unnecessary, and would not be consistent with the purposes of pooled advance payments to provide necessary contract financing in such way as to minimize administrative effort and inconvenience of contractors and the Government.

§ 163.68a Excluded advance payments.

The regulations of this part do not apply to advance payments for:

(a) Extension or connection of public utilities for military installations, as authorized by Military Construction Authorization Acts;

(b) Insurance of official motor vehicles in foreign countries, and expenses of investigations in foreign countries, as authorized by section 603 of the Department of Defense Appropriation Act, 1960 (73 Stat. 378) or by other legislation authorizing payments for such expenses;

(c) Rentals, as authorized by section 606 of the Department of Defense Appropriation Act, 1960 (73 Stat. 378) or by 31 U.S.C. 529i (69 Stat. 314) or by other legislation specifically authorizing advance payment of rent;

(d) Tuition, as authorized by 31 U.S.C. 529i (69 Stat. 314);

(e) Subscriptions to publications, as authorized by 31 U.S.C. 530;

(f) Small purchases of goods or services in foreign countries, when the purchase price does not exceed $2,500 or equivalent amount of applicable foreign currency and advance payment of the purchase price or of a part thereof is required by and made in compliance with the laws or ministerial, i.e., governmental, regulations of the foreign country concerned, as authorized by 31 U.S.C. 529i (69 Stat. 314).

Subpart E—Progress Payments Based on Costs

§ 163.69 Scope.

This subpart provides uniform policies, procedures, and forms for progress payments based on costs.

§ 163.69–1 References.

Sections 163.1, 163. 2, 163.3, 163.4, 163.5, 163.10, 163.11, 163.12, and all of Subpart B apply to all progress payments, whether based on costs or on a percentage or stage of completion.

§ 163.69–2 Exclusions.

This subpart does not apply to (a) cost-reimbursement type contracts, except as to progress payments to subcontractors and suppliers thereunder (§ 163.83), or (b) contracts for construction (as defined in § 10.101–6 of this chapter), or for shipbuilding or ship conversion, alteration or repair, when such contracts provide for progress payments based on a percentage or stage of completion.

§ 163.69–3 Contract coverage.

Except as provided in § 163.69–2, this subpart applies to all contracts (§ 1.201–4 of this chapter) providing for progress payments. This subpart applies to new procurement, to contract changes concerning progress payments, and to existing contracts whenever consistent therewith.

§ 163.70 Percentage or stage of completion.

Progress payments based on a percentage or stage of completion will be confined to contracts for construction (§ 10.101–6 of this chapter), shipbuilding and ship conversion, alteration or repair. For all other contracts, including any separate contracts for engines, machinery, equipment or other components for ships, the only types of progress payment provisions will be those based on costs, as authorized herein. However, on existing contracts which provide for

progress payments based on a percentage or stage of completion, it is not required that provision for progress payments based on costs be substituted in connection with future amendments, supplements or modifications, if such substitution is found impracticable. See § 163.85–1.

§ 163.71 General.

It is not and has not been the policy of the Department of Defense that the proper use of progress payments should be stopped or unreasonably curtailed. Progress payments are sometimes necessary and useful to supplement the working funds available to defense contractors of all sizes. It seldom should be necessary for progress payments based on costs to exceed 85 percent of direct labor and material costs, or 70 percent of total costs, of the work done under the undelivered portion of the contract.

§ 163.71–1 Requests for proposals.

Requests for proposals shall state that contract provision for progress payments will be made in conformity with regulations, and that the need for progress payments conforming to regulations will not be considered as a handicap or adverse factor in the award of contracts.

§ 163.72 Customary progress payments; standards.

(a) Certain types of production contracts involve a long "lead time" or preparatory period, normally approximating six months or more between the beginning of work and the first delivery, and may require contractor's predelivery expenditures that will have a material impact on the contractor's working funds. Familiar examples include, among others, contracts for aircraft, engines, complex items of electrical or electronics equipment, heavy handling equipment, production machines and equipment, tanks and other items of heavy ordnance.

(b) Progress payments have been traditional and customary on this class of contracts, on the basis of a percentage of total costs or of direct labor and material costs.

(c) Percentages for customary progress payments shall be not more than 70 percent of total costs or 85 percent of direct labor and material costs of the work done under the undelivered portion of the contract, except that for negotiated contracts with small business concerns and for procurement by "Small Business Restricted Advertising" or pursuant to § 163.73–3, these percentages may be 75 percent of total costs or 90 percent of direct labor and material costs whenever deemed reasonably necessary. Higher percentages will be regarded as unusual, and not within the category of customary progress payments.

(d) The long lead time or preparatory period in these cases, and the accompanying pre-delivery expenditures that may have a material impact on the contractor's working funds, are regarded as making these customary progress payments reasonably necessary, and as making the general preference for private financing not applicable to this class of cases. Provision for customary progress payments will be made as a matter of course when requested by contractors who are known (from experience or adequate pre-award investigation) to be reliable, competent, capable of satisfactory performance, in satisfactory financial condition, and to have an adequate accounting system and controls. In such cases, it is not necessary to require projections of cash receipts and expenditures or other demonstration of actual reasonable need for progress payments. However, in order to minimize administrative effort and expense, progress payments will be discouraged on relatively small contracts of the stronger and larger contractors who are not small business concerns, e.g., contracts for less than $1,000,000. If a small business concern, and the contract involved, meet the above standards for customary progress payments, the smallness of the contract shall not deter the making of provision for customary progress payments to such small business concerns.

§ 163.72–1 Applicability of percentages.

The standard percentages authorized by §§ 163.72 and 163.73 shall apply to new contracts, new procurement effected by supplements, amendments or modifications of existing contracts, definitive contracts superseding letter contracts, instruments effecting new procurement under basic or master agreements, and to all supplements, amendments or modifications which affect or provide for progress payments, as well as to any outstanding contracts which contain optional provision as to progress payment percentages, after due notice by the contracting officer. See § 163.93.

§ 163.72–2 Amendment to reduce percentages.

Contracting officers are authorized and encouraged to negotiate amendments of existing contracts so as to reduce the progress payment percentages therein stated to the standard percentages mentioned in §§ 163.72 and 163.73.

§ 163.72–3 Indefinite quantity contracts.

For indefinite quantity contracts, contemplating requisitions, delivery orders, work orders, task orders, job orders or their equivalent, if the contractor meets all other requirements for customary progress payments, the decision as to whether progress payments come within the customary category will depend upon estimates of the amount of work expected to be done, and the production lead time expected to be necessary for the major part of the work anticipated. In these cases, provision for progress payments in the indefinite quantity contract may be deemed customary if the amounts involved, and the production lead time, will result in the substantial equivalent of the customary progress payments. The standards for unusual progress payments govern when progress payments are not of the customary type.

§ 163.72–4 Administration.

When progress payments are provided in the cases mentioned in § 163.72–3, such as indefinite quantity contracts for overhaul or maintenance, (a) the contract price is deemed to be the total of the amount of requisitions, delivery orders, work orders, task orders or their equivalent issued under the basic contract, (b) costs for progress payment purposes are the cost allocable to all such requisitions, etc., and (c) payments and liquidations will be handled in the same way as if all such requisitions, etc., constituted work under a single fixed-price type contract.

§ 163.73 Formal advertising; small business restricted advertising.

Incident to formal advertising, invitations for bids shall provide for progress payments in the manner and under the circumstances stated below.

§ 163.73–1 Progress payment provision in invitations for bids.

(a) When progress payments are contemplated, the invitations for bids shall state that upon written request by the prospective contractor a progress payment clause (to be included in the invitations for bids or identified by appropriate reference therein, and to be the appropriate one of the contract clauses at 70 percent of total costs or 85 percent of costs of direct labor and material) will be included in the contract at the time of award. These invitations for bids providing for progress payments shall also state that the need for progress payments conforming to regulations will not be considered as a handicap or adverse factor in the award of contracts, and that bids including requests for progress payments will be evaluated on an equal basis with bids not including requests for progress payments.

(b) Provision for progress payments shall be made in invitations for bids whenever the contracting officer considers (1) that the period between the beginning of work and the required first production delivery will exceed six months, or (2) that progress payments will be useful or necessary by reason of circumstances that will involve substantial accumulation of pre-delivery costs that may have a material impact on a contractor's working funds (including but not limited to substantial small business set-asides expected to involve a relatively large predelivery accumulation of materials, purchased parts or components).

(c) Provision for progress payments shall also be made in invitations for bids whenever it is estimated that the procurement will involve approximately $100,000 or more and that bids are likely to be submitted by one or more small business concerns, unless the procurement is within one or more of the excepted categories set out below. Provision for progress payments ordinarily will not be made in invitations for bids when the procurement is for quick turnover items of kinds for which predelivery financing by progress payments is not the custom or practice on sales by members of the industry to private commercial customers, such as (1) subsistence, (2) clothing and apparel, (3) "off-the-shelf" items, and (4) standard commercial items or equivalent items (including

medical and dental supplies), not requiring substantial accumulation of predelivery expenditures.

(d) Reasonable doubts should be resolved in favor of inclusion of progress payment provisions in invitations for bids, in order to (1) facilitate necessary contract financing assistance to small suppliers and (2) avoid the necessity for rejecting, as nonresponsive, bids conditioned on progress payments when the invitations for bids do not provide for progress payments.

§ 163.73–2 Small business restricted advertising.

The above policy and standards also apply to procurement by "Small Business Restricted Advertising," except that in "Small Business Retricted Advertising" (and also for procurement pursuant to § 163.73–3), when deemed reasonably necessary, provision may be made for progress payment percentages up to 75 percent of total costs or 90 percent of costs of direct labor and material.

§ 163.73–3 Progress payments exclusively for small business.

A stated purpose of Public Law 85–800, 72 Stat. 966, is "to improve opportunities for small business concerns to obtain a fair proportion of Government purchases and contracts." One of the sections of this statute amended 10 U.S.C. 2307 by providing that contracting agencies "may—insert in bid solicitations—a provision limiting to small business concerns—progress payments." In furtherance of the purposes of this statute, whenever provision for progress payments is to be made in invitations for bids (as provided by §§ 163.73–1 and 163.73–4), careful consideration shall be given as to whether or not the contemplated availability of progress payments shall be restricted to small busines concerns only. If it is considered by the contracting officer that progress payments should not be reasonably necessary for prospective bidders other than small business concerns, the provision for progress payments (§ 163.73–1) and the notice to bidders (§ 163.73–4) will be supplemented by a limitation to the effect that "The progress payments clause will be available to small business concerns only, and will not be included for contractors who are not small business concerns." (For percentages, see §§ 163.72 and 163.73–2.)

§ 163.73–4 Notice to bidders.

Those invitations for bids that make provision for progress payments (§ 163.73–1) should contain substantially the following notice to biders:

PROGRESS PAYMENTS

The need for progress payments conforming to regulations (Part 163, Subchapter G) will not be considered as a handicap or adverse factor in the award of contracts. Bidders desiring progress payments in accordance with the Progress Payment clause attached hereto, shall include a written request therefor in their bids, and bids including requests for progress payments will be evaluated on an equal basis with bids not including a request for progress payments. Blanks, if any, in the attached Progress Payment clause, will be filled in by the Contracting Officer, before award, in conformity with regulations.[1] If a bid does not contain a request for progress payment provision, the Progress Payment clause will not be included in the contract as awarded.

§ 163.73–5 Total costs clause preferable.

The Total Costs clause (§ 163.79–1) is preferable to the Direct Labor and Materials Cost clause (§ 163.79–2) in procurement by formal advertising and in Small Business Restricted Advertising. When the Total Costs clause (§ 163.79–1) is used, it is not necessary to make the cost estimates and computations that are required before the appropriate percentages can be determined for (a)(3)(ii), (a)(4) and (b) of the Direct Labor and Materials Cost clause (§ 163.79–2). Generally, the principles of §§ 163.92 and 163.93–6 should be simpler to apply to the Total Costs clause (§ 163.79–1) than to the Direct Labor and Materials Cost clause (§ 163.79–2).

§ 163.73–6 Non-responsive bids; uninvited progress payment condition.

To minimize the possibility of misunderstandings, the recipients of invitations for bids, or those included on bidders lists, should be informed and kept aware that when invitations for bids do not provide for progress payments, progress payment clauses cannot be included in the contract at time of award, and that bids conditioned upon provision for progress payments will have to be rejected as nonresponsive. This precautionary warning notice may be included in invitations for bids, or may accompany invitations for bids, or may be otherwise circulated or made known to prospective bidders by such means as are considered appropriate. Also, prospective bidders who are not small business concerns should be given appropriate precautionary warning notice that when invitations for bids provide for progress payments for small business concerns only (§ 163.73–3), progress payment provision cannot be made for contractors who are not small business concerns, and that bids of those who are not small business concerns, if conditioned upon provision for progress payments, will have to be rejected as nonresponsive.

[1] Omit the third sentence, above, when the Total Costs clause (§ 163.79–1) is used.

§ 163.74 Unusual progress payments: standards; procedure.

(a) Progress payments based on costs, other than progress payments of the class and within the limits set forth in §§ 163.72 and 163.73, will be regarded as unusual, and will require special approval. This is deemed necessary for the purpose of minimizing risks, and in order to establish and maintain the greatest practicable uniformity with regard to such progress payments within and among the Military Departments. Any contractor seeking provision for progress payments that is "unusual," within the meaning of these regulations, will be required to demonstrate fully his actual need therefor, with due regard to the preference for private financing, including guaranteed loans. Requests for "unusual" progress payments shall be approved only under exceptional circumstances and must have the specific approval of the Head of a Procuring Activity (§ 1.201–7) or of a general or flag officer designated for that purpose.

(b) Such cases must involve a preparatory period requiring contractor's predelivery expenditures that are large in relation to the contract price and in relation to the contractor's working capital and credit. Contract provisions for progress payments in this category will be only supplementary to private financing, including guaranteed loans, in amounts necessary for contract performance. The percentage rates and cost bases for progress payments on new procurement in this category will be determined on a minimum basis commensurate with the contractor's production schedule requirements and minimum inventory lead time, with due regard to the contractor's projected cash needs, cash resources and their planned application.

(c) All requests involving progress payments at rates exceeding 85 percent (or 90 percent for small business concerns) of direct labor and material costs or exceeding 70 percent (or 75 percent for small business concerns) of total costs, if regarded favorably by the Head of a Procuring Activity (§ 1.201–7) or by a specially designated general or flag officer within a procuring activity, will be forwarded, with supporting information, for approval of a designated office or person at departmental headquarters of the Military Department directly concerned. Such office or person may be the contract financing office at departmental headquarters or such person or persons, located at departmental headquarters and responsible to the Under or Assistant Secretary responsible for the comptroller function, as may be designated for this purpose by such Under or Assistant Secretary. Such requests, before approval, will be coordinated speedily with representatives of the other Military Departments and of the Assistant Secretary of Defense (Comptroller). When approval is given by the contract financing office, or other designated representative of the Under or Assistant Secretary abovementioned, such approval will ordinarily extend to future contracts with the same contractor, so that resubmission of future similar requests for unusual progress payments to that contractor need not be required unless so indicated on the initial approval or thereafter required by the approving authority after review of the contractor's current condition and circumstances.

§ 163.75 Accounting system and controls.

The contractor's accounting system and controls must be adequate for the proper administration of progress payments. If the contractor's accounting system and controls have been found (by experience or by one of the Military audit agencies) to be sufficient and reliable for segregation and accumulation of contract costs, no further examination should be necessary so long as the efficiency and reliability of the contractor's system and controls are main-

tained. In all doubtful cases, including contracts with contractors with whom a military audit agency has had no experience within the next preceding twelve months, the adequacy of the contractor's accounting system and controls shall be determined, and any necessary changes accomplished, before inclusion of a progress payment clause in a contract. For this purpose, the services of the military audit agencies should be utilized to the greatest extent practicable.

§ 163.76 Information required.

The information required to support a contract provision for progress payments is that which is found necessary under the circumstances of each case to establish that the case complies with Subparts B and E of this part. For guidance as to necessity for financial information and analysis, and the scope, depth and detail of analysis, see particularly §§ 163.27 and 163.28.

§ 163.77 Advance payments.

When advance payments and progress payments are authorized in the same contract, progress payment percentages will not exceed 85 percent of direct labor and material costs or 70 percent of total costs, whichever may be applicable.

§ 163.78 Definitions.

As used in this subpart, the terms in §§ 163.78–1 to 163.78–9 have the meanings set forth.

§ 163.78–1 Progress payments.

See § 163.11. The term "progress payments" must be distinguished from "partial payments." The term "partial payments" describes only (a) payments for partial deliveries accepted by the Government under a contract, or (b) partial payments on contract termination claims.

§ 163.78–2 Customary progress payments.

See §§ 163.72 and 163.73.

§ 163.78–3 Unusual progress payments.

See § 163.74.

§ 163.78–4 Costs.

Costs include all expenses of contract performance which are reasonable, allocable to the contract, consistent with sound and generally accepted accounting principles and practices, and not excluded by the contract. The term "costs" includes "incurred costs" when the contractor is not delinquent in payment of costs of contract performance in the ordinary course of business. It may also include incurred costs, after such delinquency, to the extent provided in § 163.93–4.

§ 163.78–5 Incurred costs.

Incurred costs are those costs identified through the use of the accrual method of accounting and reporting. As to invoices, incurred costs include only invoices for (a) completed work to which the prime contractor has acquired title, (b) materials delivered (to which the prime contractor has acquired title), (c) services rendered, (d) costs billed under cost reimbursement or time and material subcontracts for work to which the prime contractor has acquired title, and (e) invoices for progress payments to subcontractors which have been paid or approved for current payment in the ordinary course of business (as specified in the prime contract), all properly recorded on the books of the contractor and identified with the contract. Costs incurred include costs of direct labor, direct material, and direct services identified with and necessary for the performance of the contract, and also all properly allocated and allowable overhead (indirect) cost as shown by the books of the contractor.

§ 163.78–6 Unliquidated progress payments.

Unliquidated progress payments are the aggregate sum of all progress payments made, less the aggregate sum of amounts applied to reduce progress payments.

§ 163.78–7 Contract price.

The term "contract price" means the total amount fixed by the contract (other than any portion of the contract specifically providing for cost reimbursement only), as amended, to be paid for complete performance of the contract. If the contract provides for escalation or for redetermination of price, this term means the initial price until changed and not the ceiling price. If the contract is of the incentive type, this term means the initial or target price until changed, and not the ceiling or maximum price. For letter contracts and similar preliminary contractual instruments, this term means the maximum expenditure authorized by the contract, as amended.

§ 163.78–8 Amendments, supplements, and modifications.

The terms "amendment," "supplement," and "modification" are used interchangeably, and whenever one of these terms is used it includes the others. The terms "separate new contracts," and "separate contracts," as used herein, do not include "amendments."

§ 163.78–9 Deviation.

The term "deviation" means (a) any change, addition to, or deletion from the contract clauses and certificate forms required by this subpart, (b) any contract provision, outside the progress payment clause, which would have the effect of altering or changing the effect of the progress payment clauses provided herein, and (c) any variation from these regulations. Actions pursuant to § 163.80–6 are not deviations.

§ 163.79 Contract clauses.

Except as otherwise provided in § 163.85, one of the following progress payments clauses shall be used whenever progress payments are to be made to a contractor based upon a percentage of costs, whether or not the contract schedule provides for reimbursement of progress payments to subcontractors. See § 163.79–3.

§ 163.79–1 Total costs clause.

PROGRESS PAYMENTS (APR. 1960)

Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of amounts.* (1) Unless a smaller count is requested, each progress payment shall be (i) 70 percent of the amount of the Contractor's total costs incurred under this contract plus (ii) the amount of progress payments to subcontractors as provided in (j) below; all less the sum of previous progress payments.

(2) The Contractor's total costs ((a)(1)(i)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers except for completed work (including partial deliveries) to which the Contractor has acquired title and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 70 percent of the costs mentioned in (a)(1)(i), above, plus any unliquidated progress payments mentioned in item (a)(1)(ii), above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii) 70 percent of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments.

(4) The aggregate amount of progress payments made shall not exceed 70 percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) *Liquidation.* Except as provided in the clause entitled "Termination For Convenience of the Government," all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, or 70 percent[1] of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, (v) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract, or (vi) is realizing less profit than the estimated profit used for establish-

[1] For lower percentage for this paragraph, see § 163.81–2.

ing a liquidation percentage in paragraph (b), if that liquidation percentage is less than the percentage stated in paragraph (a)(1).

(d) *Title.* When any progress payment is made under this contract, title to all parts; materials; inventories; work in process; special tooling as defined in the clause of this contract entitled "Special Tooling;" nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids not included within the definition of special tooling in such "Special Tooling" clause; and drawings and technical data (to the extent delivery thereof to the Government is required by other provisions of this contract); theretofore acquired or produced by the Contractor and allocated or properly chargeable to this contract under sound and generally accepted accounting principles and practices shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor and allocated or properly chargeable to this contract as aforesaid shall forthwith vest in the Government upon said acquisition, production or allocation. Notwithstanding that title to property is in the Government through the operation of this clause, the handling and disposition of such property shall be determined by the applicable provisions of this contract such as: the Default clause and paragraph (h) of this clause; Termination for Convenience of the Government clause; and the Special Tooling clause. Current production scrap may be sold by the Contractor without approval of the Contracting Officer and the proceeds shall be credited against the costs of contract performance. With the consent of the Contracting Officer and on terms approved by him, the Contractor may acquire or dispose of property to which title is vested in the Government pursuant to this clause, and in that event, the costs allocable to the property so transferred from this contract shall be eliminated from the costs of contract performance and the Contractor shall repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred. Upon completion of performance of all the obligations of the Contractor under this contract, including liquidation of all progress payments hereunder, title to all property (or the proceeds thereof) which had not been delivered to and accepted by the Government under this contract or which had not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor. The provisions of this contract referring to or defining liability for Government-furnished property shall not apply to property to which the Government shall have acquired title solely by virtue of the provisions of this clause.

(e) *Risk of loss.* Except to the extent that the Government shall have otherwise expressly assumed the risk of loss of property, title to which vests in the Government pursuant to this clause, in the event of the loss, theft or destruction of or damage to any such property before its delivery to and acceptance by the Government, the Contractor shall bear the risk of loss and shall repay the Government an amount equal to the unliquidated progress payments based on costs allocable to such lost, stolen, destroyed or damaged property.

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports; access to records.* Insofar as pertinent to the administration of this clause, the Contractor will (1) furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the Contracting Officer, and (2) give the Government reasonable opportunity to examine and verify its books, records and accounts.

(h) *Special provisions regarding default.* If this contract is terminated pursuant to the clause entitled "Default," (1) the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments and (2) with respect to all property as to which the Government elects not to require delivery under the clause entitled "Default," title shall vest in the Contractor upon full liquidation of progress payments. and the Government shall be liable for no payment except as provided by the "Default" clause.

(i) *Reservations of rights.* The rights and remedies of the Government provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title pursuant to this clause, shall excuse the Contractor from performance of its obligations under this contract, nor constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Government in exercising any right, power or privilege under this clause shall affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power or privilege of the Government.

(j) *Progress payments to subcontractors.* (1) The amount mentioned in item (a)(1)(ii) above shall be the sum of (i) all the progress payments made by the Contractor to his subcontractors and remaining unliquidated, and (ii) unpaid billings for progress payments to subcontractors which have been approved for current payment in the ordinary course of business, when under subcontracts which conform to (2) below.

(2) Subcontracts on which progress payments to subcontractors may be included in the base for progress payments pursuant to paragraph (a) of this clause are limited to those subcontracts in which there is expected to be a long "lead time," approximating six months or more between the beginning of work and the first delivery, containing subcontract progress payment provisions which (i) are substantially similar to and as favorable to the Government as this "Progress Payments" clause, no more favorable to the subcontractor than this clause is to the contractor and on a basis of not more than 70 percent of total costs or 85 percent of direct labor and material costs (except that these percentages may be 75 percent of total costs or 90 percent of direct labor and material costs for those subcontractors which are small business concerns), and (ii) make all rights of the subcontractor with respect to all property to which the Government has title under the subcontract subordinate to the rights of the Government to require delivery of such property to it in the event of default by the Contractor under this contract or in the event of the bankruptcy or insolvency of the subcontractor.

(3) The Government agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract shall be applied to reduce the amount of unliquidated progress payments made by the Government to the Contractor under this contract. In the event the Contractor fully liquidates such progress payments made by the Government to him hereunder and there are progress payments to any subcontractors which are unliquidated, the Contractor shall be subrogated to all the Government's rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the Contractor.

(4) The billings described in (j)(1)(ii) above shall be paid promptly by the Contractor in the ordinary course of business not later than a reasonable time after payment of equivalent amounts by the Government to the Contractor.

(5) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to those subcontractors which are small business concerns in conformity with the standards for customary progress payments stated in paragraph 503 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

§ 163.79–2 Direct labor and materials cost clause.

PROGRESS PAYMENTS (OCTOBER 1960)

Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of amounts.* (1) Unless a smaller amount is requested, each progress payment shall be (i) 85 percent of the amount of the Contractor's costs incurred of direct labor and material[1] only under this contract plus (ii) the amount of progress payments to his subcontractors as provided in (j) below and remaining unliquidated; all less the sum of previous progress payments.

(2) The Contractor's costs above-mentioned ((a)(1)(i)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title, and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 85 percent of the costs mentioned in (a)(1)(i), above, plus any unliquidated progress payments mentioned in (a)(1)(ii), above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii)—percent of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments. [For percentage here and in (a)(4), see the first bracketed instruction in (b) below.]

(4) The aggregate amount of progress payments made shall not exceed ------ percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) *Liquidation.* Except as provided in the clause entitled "Termination For Convenience of The Government," all progress

[1] Strike out "labor and" or "and material" if progress payments are limited to single direct cost.

payments shall be liquidated by deducting from any payment under the contract, other than advance or progress, the amount of unliquidated progress payments, or ____ percent [insert a percentage which is to 85 percent as the amount of estimated costs forming the basis for progress payments is to the amount of the estimated total costs] of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. [For percentage for this paragraph, lower than the percentage computed pursuant to the above instruction and § 163.81–1(b), see § 163.81–2.]

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (1) has failed to comply with any material requirement of this contract, (2) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (3) has allocated inventory to this contract substantially exceeding reasonable requirements, (4) is incurring costs, whether or not of the kinds eligible for progress payments under paragraph (a) (1) above, which are higher than the respective estimated costs used for establishing the liquidation percentage in paragraph (b) above, (5) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, or (6) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(d) *Title.* (Same as paragraph (d) or "Total Costs" clause.)

(e) *Risk of loss.* (Same as paragraph (e) of "Total Costs" clause.)

(f) *Control of costs and property.* (Same as paragraph (f) of "Total Costs" clause.)

(g) *Reports; access to records.* (Same as paragraph (g) of "Total Costs" clause.)

(h) *Special provisions regarding default.* (Same as paragraph (h) of "Total Costs" clause.)

(i) *Reservations of rights.* (Same as paragraph (i) of "Total Costs" clause.)

(j) *Progress payments to subcontractors.* [Same as paragraph (j) of "Total Costs" clause.]

§ 163.80 General instructions for progress payment clauses.

The instructions below apply to the clauses required by § 163.79 and set forth in §§ 163.79–1 and 163.79–2.

§ 163.80–1 Contracting officer.

The term "contracting officer" as used in this subpart means the contracting officer as defined in § 1.201–3 of this chapter.

§ 163.80–2 Variation in percentages.

The percentages stated in (a) (1) (i) of the clauses in §§ 163.79–1 and 163.79–2 are the normal percentages for the customary progress payments authorized by § 163.72. Higher percentages may be provided in the manner and to the extent authorized by § 163.74. Lower percentages may be used in (a) (1) (i) of §§ 163.79–1 and 163.79–2 when agreed, and will be used for unusual progress payments when found adequate in accordance with the standards set forth in § 163.74. Such lower percentages shall not be utilized for progress payments pursuant to § 163.73.

§ 163.80–3 Total cost basis: percentage other than 70 percent.

If a percentage other than 70 percent is specified in (a) (1) (i) of the total costs clause set forth in § 163.79–1, the percentage actually specified in (a) (1) (i) of the Progress Payment clause of the contract shall also be specified in (a) (3) (i), (a) (3) (ii), (a) (4) and (b) of the Progress Payment clause. (As to (b), see § 163.81.)

§ 163.80–4 Limited cost basis; other percentages.

When the Progress Payment clause set forth in § 163.79–2 is used, the percentage actually specified in (a) (1) (i) of the Progress Payment clause of the contract will also be specified in (a) (3) (i). The percentage to be specified in (a) (3) (ii), (a) (4), and (b) of that clause will be computed in the manner provided in § 163.81–1, except that a percentage higher than the percentage so computed may be specified in paragraph (b) if agreed. Subject to this exception permitting use of a higher percentage in (b) (or a lower percentage in (b) established pursuant to § 163.81–2), the percentage to be specified in (a) (3) (ii), (a) (4), and (b) will thus be a percentage which is to the percentage in (a) (1) as the amount of estimated costs forming the basis for progress payments is to the amount of estimated total costs of performance of the undelivered portion of the contract. This same principle will apply if a narrower cost basis, more limited than the cost basis stated in § 163.79–2, is utilized for progress payments. (See § 163.80–5.)

§ 163.80–5 Cost basis less than direct labor and material costs.

Instead of the direct labor and material cost basis provided in § 163.79–2, a narrower and more limited cost basis for progress payments may be utilized for that clause, such as direct labor only, direct material only, or direct labor or material costs applicable only to certain specified items, or specified direct costs other than direct labor or material costs. Appropriate changes will be made in (a) (1) (i) of the clause set forth in § 163.79–2 when such a narrower and more limited cost basis is to be used. For example, if eligible costs are to be limited to direct material costs, the words "labor and" should be deleted from (a) (1) (i); or, if eligible costs are to be limited to direct labor costs, the words "and material" should be deleted from (a) (1) (i).

§ 163.80–6 Other protective provisions.

When deemed reasonably necessary for the protection of the Government, the clauses set forth in §§ 163.79–1 and 163.79–2 may be supplemented by additional protective provisions, such as personal or corporate guarantees, subordinations or stand-bys of indebtedness, special bank accounts, and other protective covenants of the kinds outlined in item (r) of § 163.64–2.

§ 163.81 Progress payment liquidation.

Controlling principles for liquidation of progress payments based on costs are set out below.

§ 163.81–1 Ordinary method.

Except as authorized by § 163.81–2, the required method for liquidation and the applicable liquidation percentages are:

(a) when costs other than for direct labor and material are in the base for progress payments, the percentage of the contract price of delivered items to be applied for liquidation of progress payments will be not less than the percentage of costs upon which progress payments are based, e.g., when progress payments are based on 75 percent of all costs, liquidation will be at a rate not less than 75 percent of the contract price of separate items as they are delivered, or when progress payments are based on 70 percent of all costs, liquidation will be at a rate not less than 70 percent of the contract price of separate items as they are delivered;

(b) when progress payments are based on 90 percent (or specified lesser percentage) of the costs of direct labor and material, the rate of liquidation of progress payments will be not less than 90 percent (or the specified lesser percentage) of the percentage of estimated total costs represented by the estimated costs of direct labor and material. Thus, for example, if the base for progress payments is 90 percent of the costs of direct labor and material, and if estimated costs of direct labor and material are 70 percent of total estimated costs, liquidation will be at a rate not less than 63 percent (90 x 70) of the contract price of separate items as they are delivered. See § 163.81–3.

§ 163.81–2 Alternate method.

(a) The above method for liquidation of progress payments (§ 163.81–1) will not apply if, at the inception of a contract (on the basis of satisfactory cost estimates) or thereafter by amendment (based on satisfactory data on cost experience and estimated future costs) the parties shall agree on a percentage rate of liquidation which will (1) effect liquidation of the amount of progress payments involved in each invoice from which liquidation of progress payments is to be made (i.e., recovery of the portion of costs for which progress payments have been made), (2) permit payment to the contractor of not more than the cost of items delivered and accepted (less allocable progress payments) and his earned profit on those items, and (3) insure that unliquidated progress payments will not exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to that portion of the contract which has not been delivered, accepted and invoiced.

(b) However, when progress payments are made at 75 percent of the total costs, this percentage for liquidation of progress payments, lower than that prescribed by § 163.81–1, to the extent appropriate, shall not be fixed at a rate less than 70 percent except as provided in paragraph (c) of this section. If the progress payment percentage of total costs is less than 75 percent, comparable

relationship between the progress payment percentage and the above minimum liquidation percentage shall be maintained. Similar principles as to minimum liquidation percentages shall be applied when progress payments are to be made at 90 percent of the costs of direct labor and material, or on a more limited cost base, or at lesser percentages of limited costs. For example, when progress payments are made at 70 percent of the total costs, this percentage for liquidation of progress payments, lower than that prescribed by § 163.81–1, to the extent appropriate, shall not be fixed at a rate less than 65.3 percent except as provided in paragraph (c) of this section

(c) With regard only to items for which final prices have been established under contracts, progress payment liquidation percentages conforming to the standards stated in paragraph (a) of this section, but less than the minimum liquidation percentages stated and outlined in paragraph (b) of this section, (e.g., less than 70 percent when progress payments are based on 75 percent of total cost or less than 65.3 percent when progress payments are based on 70 percent of total costs) may be established by amendment of contracts upon submission of satisfactory information by the contractor showing separately (1) the cost of items that have been delivered, accepted and invoiced, (2) the cost of work not delivered, accepted and invoiced, (3) the estimated costs of completion, and (4) an applicable profit on the items for which final prices have been established that is higher than the amount of profit permitted to be released by application of the progress payment liquidation percentage then specified in the contract.

(d) Liquidation percentage rates as described herein, less than those prescribed by § 163.81–1 will not be established initially or by amendment except on the basis of satisfactory cost data and estimates furnished by the contractor. Contracts may be amended to reduce the liquidation rate not more frequently than once in each period of twelve months. See § 163.81–3.

§ 163.81–3 Liquidation percentages.

(a) Liquidation percentages shall conform to § 163.81–1, except as authorized by § 163.81–2.

(b) In the application of paragraphs (a) and (b) of § 163.81–2, when progress payments are at the rate of 75 percent of all costs, the minimum liquidation percentage of 70 percent would not apply if the estimated profit rate is less than 7.3 percent of total costs. If, for example, the estimated profit rate is 5 percent of total costs, the minimum liquidation percentage permitted by (a) and (b) of § 163.81–2 would be approximately 71.5 percent. At this 5 percent profit rate, assuming (1) price $105, (2) costs $100, and (3) progress payments $75, this minimum liquidation rate of 71.5 percent would be necessary for recovery of the $75 of progress payments from the $105 delivery billing (75÷105=71.5 percent, and 0.715×$105=$75.07). The same principles are applicable when, pursuant to paragraph (c) of § 163.81–2, a liquidation rate lower than the 70 percent minimum is to be established. For example, assuming an established profit rate of 8 percent of total costs of items for which final prices have been established, the minimum liquidation rate for those items would be 69.5 percent when progress payments are at the rate of 75 percent of total costs. Assuming, (i) fixed price $108, (ii) costs $100, and (iii) progress payments $75, the calculation would be: 75÷108=0.6944, and (rounding this upward to 0.695), 0.695×$108 $75.06.

(c) Paragraph (b) of § 163.81–1 provides the standards, and gives an example for establishing the minimum liquidation percentage when progress payments are to be at 90 percent of costs of direct labor and material (or lesser percentages of more limited costs). In the application of paragraphs (a) and (b) of § 163.81–2, when progress payments are at the rate of 90 percent of costs of direct labor and material, examples of the minimum liquidation rates are:

(1) When costs of direct labor and material are 70 percent of total costs, and the profit rate is 5 percent of total costs, the minimum liquidation percentage would be 60 percent. Assuming price $105, costs $100, costs of direct labor and material $70, and progress payments $63, then 63÷105=60 percent. Application of the 60 percent liquidation percentage to the delivery price of $105 recovers the $63 of progress payments.

(2) On assumptions the same as example (1), above, except that costs of direct labor and material are computed at 80 percent of total costs ($80 of the total costs of $100), so that progress payments on the item are $72 (90 percent of $80), the minimum liquidation percentage would be 68.6 percent (72÷105=68.6 percent, i.e., 68.57 percent rounded upward to 68.6 percent). Application of this 68.6 percent liquidation percentage to the delivery price of $105 recovers $72.03 against the $72 of progress payments.

(d) In line with the standards set for progress payments based on 75 percent of all costs, calculation of minimum liquidation rates pursuant to (a) and (b) of § 163.81–2, when progress payments are at 90 percent (or lesser percentage) of costs of direct labor and material (or costs more limited), will not take into account any amount of profit that exceeds 7.3 percent of total costs. Thus, on example (1) next above (assuming profit rate of 7.3 percent of costs or any greater rate), the minimum liquidation percentage would be 58.72 percent (63÷107.3= 58.72 percent).

(e) The above principles (paragraphs (a), (b), (c), (d) of this section) apply when progress payments are at the rate of 70 percent of all costs or 85 percent of costs of direct labor and material, or at other percentages. In conformity to the above pattern, liquidation rates would be lower than those set out in (b), (c), and (d), to harmonize with percentages for progress payments that are lower than those mentioned in (b), (c), and (d). Thus, for instance, with regard to (a) above, if progress payments are at the rate of 70 percent of all costs (instead of 75 percent), the minimum liquidation rate comparable to the 70 percent liquidation rate mentioned in paragraph (b) of § 163.81–2, would be 65.3 percent (or a higher percentage if the estimated profit rate is less than 7.3 percent of all costs). In the first example given in paragraph (b) of this section with progress payments at 70 percent of total costs, assuming (1) price $105, (2) costs $100, and (3) progress payments $70, a minimum liquidation percentage of 66.7 percent would be necessary for recovery of the $70 of progress payments from the $105 delivery billing (70÷105=66.7 percent, and 0.667×$105= 70.03). In the second example given in paragraph (b) of this section, for application of paragraph (c) of § 163.81–2, assuming (i) fixed price $108, (ii) costs $100, and (iii) progress payments $70, the minimum liquidation rate for the finally priced items would be 64.9 percent (70÷108=64.815, and rounding this upward to 64.9, 0.649×$108=$70.09).

§ 163.82 Subcontracts.

(a) Subcontractors ought to be able to get progress payments from their customers on standards which are the same as those applicable to prime contracts. Contractors should be encouraged to extend progress payments to subcontractors on subcontracts which meet the standards for customary progress payments outlined in § 163.72.

(b) The policies and standards for "unusual" progress payments set forth in § 163.74 are equally applicable to situations where it is contemplated that contracts will provide for progress payments based on "unusual" progress payments made by a prime contractor to a subcontractor. In such cases, when the inclusion of such unusual progress payments on the subcontracts has been approved in the manner set forth in § 163.74, appropriate revision will be made in paragraph (j)(2) of the progress payment clause (See §§ 163.79–1 and 163.79–2) so as to permit inclusion of the unusual progress payments on the subcontract as part of the base for progress payments on the prime contract. Such revisions are deemed not to be deviations, and do not require the clearance called for by § 163.86(b). Sections 163.79–1(a)(2) and 163.79–2(a)(2) apply only to the "contractor's" costs mentioned in § 163.79–1(a)(1)(i) and 163.79–2(a)(1)(i) respectively. Sections 163.79–(a)(2) and 163.79–2(a)(2) do not apply to the progress payments to subcontractors mentioned in §§ 163.79–1(a)(1)(ii) and 163.79–2(a)(1)(ii) respectively. This interpretation governs evisting §§ 163.79–1 and 163.79–2 clauses in contracts as well as new contracts in which a new clarifying reference to "(a)(1)(i)," as set out above, will be included in paragraph (a)(2) of the Progress Payment clause.

§ 163.82–1 Subcontractor progress payments.

When progress payments have been made by a prime contractor to a subcontractor pursuant to the provisions of the applicable prime contract and subcontract, the progress payment to the prime

contractor to reimburse him for such progress payment to the subcontractor shall include the full amount of his progress payment made to the subcontractor. When a percentage less than 100 percent has been specified on existing contracts, this lesser percentage will control the amount of progress payments to be made pursuant to paragraph (a)(1)(ii) of §§ 163.79–1 and 163.79–2 and the maximum limit on unliquidated progress payments on account of unliquidated progress payments to subcontractors under paragraph (a)(3)(i) of §§ 163.79–1 and 163.79–2.

§ 163.82–2 Adaption of uniform clause for subcontracts.

(a) Contracting officers are not required to review or approve subcontracts merely because they provide for progress payments. However, they shall check and review subcontracts providing for progress payments to the extent appropriate in the ordinary course of administration of the progress payment clause of prime contracts. The duty rests on the prime contractor to see to it that its subcontracts providing for progress payments, to be included in the base for progress payments pursuant to the provisions of §§ 163.79–1(j) and 163.79–2(j) conform to those provisions of the contract. In adapting the clauses set forth in §§ 163.79–1 and 163.79–2 for use in subcontracts, to conform to §§ 163.79–1(j) or 163.79–2(j), the subcontract progress payment clause should have appropriate changes to reflect the position of the prime contractor as purchaser and of the subcontractor as vendor, and to indicate that the progress payments under the subcontract are being made and administered by the prime contractor. However, the title provision of the progress payments clause of the subcontract shall provide for the vesting of title directly in the Government, as set forth in §§ 163.79–1(d) and 163.79–2(d), and the subcontract will not substitute the prime contractor for the Government as the holder of title under that paragraph of the subcontract. In that title paragraph of the subcontract, reference to the prime contractor should, however, be substituted for the word "Government" in the parenthetical expression concerning drawings and technical data, and also in the second sentence of the paragraph. In the subcontract counterpart of §§ 163.78–1(g) and 163.79–2(g) entitled "Reports—Access to Records" the references to "Contracting Officer" and "Government" should not be deleted, but may in each case be expanded so as to refer to the "Contracting Officer or the prime contractor," (§§ 163.79–1(g)(1), 163.79–2(g)(1), and to the "Government or the prime contractor" (§§ 163.79–1(g)(2), 163.79–2(g)(2)).

(b) With regard to the subcontract counterpart of the "Special Provisions Regarding Default" (§§ 163.79–1(h), 163.79–2(h)) only the substance of the first 26 words of that paragraph (with reference to the prime contractor substituted for "Government"), is required for conformity to the provisions of § 163.79–3.

§ 163.82–3 Substitution of new clause for old clause.

In furtherance of the policy of encouraging the making of proper progress payments to subcontractors (§ 163.82), those contracts which contain a progress payment clause conforming to former §§ 163.79–1 or 163.79–2 as issued 25 May 1959, whether with or without the Schedule provisions authorized by former § 163.79–3, may be amended, for nominal consideration only, so as to substitute one of the §§ 163.79–1—163.79–2 clauses for the existing progress payment clause.

§ 163.83 Progress payments on subcontracts under cost-reimbursement types of prime contracts.

The policies, standards and procedures of this subpart and its references are applicable to progress payments to subcontractors and suppliers on fixed-price types of subcontracts under cost-reimbursement types of prime contracts. For the prime contractor to be reimbursed for such progress payments, it is required that the subcontracts involving progress payments conform to this part. Specifically, the case must meet the standards for customary progress payments (§ 163.72) and progress payment percentages must not exceed those authorized by § 163.72 (unless unusual progress payments to the subcontractor are approved by the procedure described in § 163.74), liquidation must conform to § 163.81, and one of the uniform clauses (§ 163.79) adapted for subcontract use (§ 163.82–2) must be utilized.

§ 163.84 Letter contracts.

When progress payments are to be made under letter contracts or similar preliminary contractual instruments, incorporation of one of the clauses set forth in §§ 163.79–1 and 163.79–2 is required except as follows:

(a) §§ 163.79–1(a)(4) or 163.79–2(a)(4) will be replaced by a provision limiting the aggregate amount of progress payments made under the letter contract to a stated amount, not exceeding 70 percent of the maximum liability of the Government under the letter contract (or such lesser percentage as may be applicable in accordance with the last two sentences of § 163.80–4 if the clause set out in § 163.79–2 is to be used). Separate limits may be prescribed for separate specified parts of the work.

(b) Until unit delivery billing prices are specified, §§ 163.79–1(b) or 163.79–2(b) concerning liquidation will not be operative, and will be supplemented by the additional provision set out below:

Progress payments made hereunder shall be liquidated in the following manner, unless previously liquidated pursuant to paragraph (b):

(1) If this letter contract shall be superseded by a fixed-price type contract (Subpart D, Part 3 of this chapter), unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the first progress or other payments which shall be made under such contract.

(2) If this letter contract shall be superseded by a cost-reimbursement type contract, progress payments made hereunder shall be liquidated by deducting the unliquidated amount thereof from the first payments which shall be made under such cost-reimbursement contract.

(3) If this letter contract shall not be superseded by a contract calling for the furnishing of all or part of the articles or services covered hereby, unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the amount payable under the provisions of the Termination clause for this letter contract.

(4) If this letter contract shall in part be terminated and shall in part be superseded by a contract, the unliquidated progress payments made hereunder shall be allocated by the Government for the purpose of liquidation to the terminated portion of the letter contract and to the superseding contract in such proportions as the Government shall deem to be equitable, and the part of such progress payments allocated to each shall be liquidated in accordance with the applicable provisions of subdivisions (1), (2), and (3) of this paragraph.

(5) If the method of liquidating progress payments provided above shall not result in the full liquidation thereof, the Contractor shall forthwith pay the unliquidated balance to the Government upon demand.

(c) Any superseding definitive contract will contain appropriate provisions, carried forward from the letter contract, for liquidation of progress payments made under the preliminary instrument. When the superseding contract provides for progress payments, the progress payment clause will be supplemented by further provision as follows:

The costs, previous progress payments, aggregate progress payments, and unliquidated progress payments, mentioned in paragraph (a) of this progress payments clause, include the costs incurred and progress payments made under the letter contract which has been superseded by this contract.

§ 163.85 Transition.

Contracts in existence on the effective date of this subpart will continue to be administered in accordance with their provisions and this part. The transition to uniform use of a progress payment clause set out in this part (§ 163.79) will be accomplished in an orderly and reasonable manner and as promptly as practicable, as set forth below.

§ 163.85–1 Separate contracts.

To the greatest extent feasible, procurement effected after the effective date of this part, and involving the establishment or continuation of progress payments, will be accomplished by separate new contracts rather than by amendments of existing contracts.

§ 163.85–2 Existing indefinite quantity contracts.

During the specified term of existing indefinite quantity contracts (not including any extension of such term) existing progress payment provisions conforming to § 163.72 with regard to progress payment percentage and conforming to § 163.81 with regard to rate of liquidation do not need to be replaced, incident to new procurement under such contracts, by a clause set forth in § 163.79.

§ 163.85–3 Supplements, amendments, and modifications; when new clause not required.

When it is found necessary to effect new procurement by amendment of a

contract (see § 163.85–1) already providing for progress payments based on costs, rather than by a separate contract, it is not required that the amendment include a clause set forth in § 163.79 if the progress payment clause already in the contract provides for progress payments not exceeding 70 percent of total costs or 85 percent of direct labor and material costs and also provides for liquidation conforming to § 163.81. However, in these cases, a clause set out in § 163.79 should be substituted for the existing progress payment clause whenever feasible.

§ 163.85–4 Supplements, amendments, and modifications; gradual operation of new clause.

(a) When a contract provides for progress payments at rates exceeding 85 percent of direct labor and material costs or exceeding 70 percent of total costs, and it is found necessary to accomplish additional procurement by an amendment rather than by a separate new contract (see § 163.85–1), the amendment should, whenever reasonable and practicable, substitute a clause set forth in § 163.79 for the progress payment clause of the contract, so as to limit all future progress payments on the entire contract to 70 percent of future total costs or 85 percent of future costs of direct labor and materials. When such substitution is made, substantially the following provision should be added:

For the purposes of paragraph (a)(1) of this clause, (i) progress payments made or to be made to the contractor on progress billings submitted to the Government on or before the date of this amendment (in the total amount of $_____), shall be excluded in computing the "sum of previous progress payments" and (ii) costs (and progress payments to subcontractors) (in the total amount of $_____), relating to the progress payments so excluded shall also be excluded in computing costs (and progress payments to subcontractors) eligible for progress payments under this amendment. The amount of progress payments unliquidated at the date of this amendment ($_____), and the amount of progress payments included in progress billings pending at the date of this amendment ($_____), aggregating ($_____), shall be liquidated at the rate of _____ percent instead of the percentage stated in paragraph (b) of this clause. Paragraphs (a)(3) and (b) of this clause shall not apply until liquidation of the aggregate amount of progress payments made or billed at the date of this amendment. Paragraph (a)(4) does not apply.

The expression "(and progress payments to subcontractors)" will be deleted if not applicable. Billings for progress payments pending at the date of the amendment will be paid in accordance with the Progress Payment clause in effect before the amendment. The rate for liquidation of unliquidated progress payments outstanding and to be outstanding pursuant to progress billings pending at the date of the amendment will be specified in accordance with the principles stated in § 163.81.

(b) When, in the circumstances described in paragraph (a) of this section, it is not reasonable and practicable to substitute a clause set forth in § 163.79 so as to limit all future progress payments on the entire contract to 70 percent of costs or 85 percent of costs of direct labor and material as the case may be, the amendment (incorporating a clause set forth in § 163.79, with percentages as specified in § 163.72) ordinarily will provide for segregation of costs attributable to work under the amendment, segregation of payments under the amendment, and administration of progress payments under the amendment on the same basis as if the amendment were a separate new contract. However, when it is found that it will be expensive or otherwise impracticable to separate costs of deliveries attributable to the amendment from those attributable to the other portion of the contract, the amendment will provide for one or the other of the arrangements described in paragraphs (c) and (d) of this section.

(c) When the last sentence of paragraph (b) of this section is applicable (and paragraph (d) of this section is not applied), the amendment will include a clause set forth in § 163.79 (with percentages conforming to § 163.72), with provision that it will become operative as herein provided. The amendment will provide for continuation of progress payments pursuant to the existing progress payment clause and for their liquidation pursuant to § 163.81, until (1) the aggregate amount of progress payments made under the contract, including progress payments previously made, equals (2) the aggregate amount of progress payments that would have been made at the previously established rates if the contract had continued without this amendment (less reductions from time to time to reflect decreases in anticipated total progress payments, resulting from any partial termination of the contract); and (3) when the amount described in subparagraph (1) of this paragraph equals the amount described in subparagraph (2) of this paragraph future progress payments will be governed by the progress payment clause included in the amendment, except that liquidation of the amount of unliquidated progress payments then outstanding will continue at the higher rate required to conform to § 163.81 until liquidation of such amount, and §§ 163.79–1(a)(4) and 163.79–2(a)(4) will not apply.

(d) When the last sentence of paragraph (b) of this section is applicable (and paragraph (c) of this section is not applied) the amendment will substitute a clause set forth in § 163.79 instead of the existing progress payment provision, but with the percentage specified for future progress payments being a weighted average percentage arrived at by dividing the amount described in subparagraph (1) of this paragraph into the amount described in subparagraph (2) of this paragraph (and with the special liquidation provision described in subparagraph (3) of this paragraph):

(1) The total of all future costs, eligible for progress payments, expected to be incurred for performance of the contract and this amendment.

(2) The sum of (i) the total of all future costs, eligible for progress payments, that would have been incurred for performance of the contract without this amendment (not including costs expected to be incurred on account of this amendment) multiplied by the percentage for progress payments theretofore specified in the contract, and (ii) the total of all future costs, eligible for progress payments, expected to be incurred solely on account of this amendment, multiplied by not more than 70 percent (or by not more than 85 percent if eligible costs are limited to direct labor and material).

(3) When such substitution is made, special provision will be added to require that (i) the unliquidated progress payments outstanding at the date of the amendment (and any progress payments made thereafter on progress billings pending at the date of the amendment) will be liquidated in the manner outlined in § 163.81, e.g., at 90 percent of delivery billings if those progress payments had been made at 90 percent of costs, or at percentages authorized by § 163.81–2, and (ii) that liquidation at the percentage specified in the progress payment clause substituted by the amendment will begin when liquidation at the higher rate mentioned in subdivision (i) of this subparagraph has been accomplished.

§ 163.85–5 Supplements, amendments, and modifications concerning progress payments.

Supplements, amendments, and modifications of existing contracts which increase the rate or percentage of progress payments, or enlarge the base for progress payments, or reduce the rate of liquidation of progress payments, or make new provision for progress payments shall conform to this part and in particular to § 163.79.

§ 163.85–6 Amendments reducing the rate of progress payments.

When contracts are amended to reduce the percentage for progress payments (§ 163.72–2), the principles set forth in § 163.85–4 are applicable, even though additional procurement is not involved.

§ 163.86 Contract financing office clearance.

The following types of provisions for progress payments require submission through channels and prior approval by the contract financing office (§ 163.26):

(a) Those involving progress payments at rates exceeding 85 percent of direct labor and material costs or exceeding 70 percent of total costs, except as authorized by §§ 163.72, 163.73 and 163.85–4;

(b) Those involving deviations, as defined in § 163.78–9;

(c) Those exceptional cases, involving unusual risks, described in § 163.26;

(d) Those involving contractors as to whom it is known that within the preceding 12 months (1) request for advance payments has been denied for financial reasons by the contract financing office, or (2) application for guarantee of a loan to the contractor or for increase or extension of maturity of a guaranteed loan, has been disapproved for financial reasons, or (3) an approved application for guarantee of a loan or for advance

payment to the contractor has lapsed or has been withdrawn; and

(e) Those involving contractors named on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-Up List."

§ 163.87 Coordination.

The coordination described in the paragraph (c) § 163.74 is required for all cases mentioned in paragraphs (a) and (b) of § 163.86.

§ 163.87–1 Control lists.

To give effect to § 163.86(d), pertinent information will be exchanged between the several contract financing offices, and distributed through normal channels to contracting officers.

§ 163.87–2 Hold-up list.

To give effect to § 163.86(e), and for other proper purposes, the "Hold-Up List" there mentioned will be distributed through normal channels to contracting officers.

§ 163.88 Contractor's request.

All invoices for progress payments on contracts containing the Progress Payment clause set out in § 163.79 (with or without the modifications authorized by § 163.85–4), and on contracts containing any deviation from that clause approved pursuant to §§ 163.86 and 163.87, will be supported by the Contractor's Request for Progress Payment (DD Form 1195) with any supporting information that may be reasonably required. This form of request also will be utilized as soon as practicable (unless incompatible with contract provisions) in connection with progress payments based on costs under existing contracts and other contracts (§§ 163.85–1, 163.85–2, 163.85–3) not containing one of the Progress Payment clauses set out in § 163.79. The use of this form is subject to the instructions set forth on the reverse thereof.

§ 163.89 Audit.

For the making of progress payments, principal reliance will be placed on the adequacy of the contractor's accounting system and controls (§ 163.75) and on the reliability of the contractor's certificates. To conserve administrative effort, hold down expense, and promote prompt payment of proper progress billings, audit before the making of progress payments will be kept to the minimum necessary for the protection of the interests of the Government. Preaudit, that is, audit before the making of a progress payment, will be limited to those situations in which there is reason to question the reliability or accuracy of the contractor's certificate, or reason to believe that the contract will involve a loss. Post-review or post-audit will be made when considered desirable by the contracting officer to determine the validity of any progress payment made on the contractor's certifications.

§ 163.90 Administration; general.

Progress payment clauses cannot be self-executing, and require careful administration to insure against overpayments and losses. In all cases the physical progress of the work should be evaluated periodically to assure that the progress payments are fairly supported by the value of the work actually accomplished on the undelivered portion of the contract in conformity with the contract requirements. Also, the unliquidated progress payments should not be permitted to exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to the partially finished undelivered portion of the contract. It is necessary for adequate supervision of progress payments that the administering office keep itself informed concerning the contractor's overall operations and financial condition, since difficulties encountered and losses suffered in operations outside the particular progress payment contract may affect adversely the performance of that contract and the liquidation of the progress payments. For contracts with those contractors whose financial condition is doubtful or not strong in relation to progress payments outstanding or to be outstanding, or whose management is of doubtful capacity or whose accounting controls are found by experience to be weak, or who are encountering substantial difficulties in performance, full information concerning both the progress under the contracts involved (including the status of subcontracts), and concerning the contractor's other operations and financial condition, should be obtained and analyzed at frequent intervals, with a view to the better protection of the interest of the Government and the taking of such action as may be proper to make contract performance more certain. If there is reason to doubt only minor elements of the costs involved in a progress billing, only the doubtful amounts should be withheld, subject to later adjustment, and the amount clearly due should be paid without awaiting resolution of the differences. So far as practicable in each case, all cost problems, particularly those involving indirect costs, of a kind likely to create disagreements in future administration of the contract, should be identified and resolved at the inception of the contract.

§ 163.90–1 Extent of supervision.

The extent of supervision required, whether for loss prevention or for avoidance of overpayments, should vary inversely with the experience, performance record, reliability, quality of management, and financial strength of contractors, and with the adequacy of their accounting system and controls. Review should be of a kind and degree that will be sufficient, consistent with the circumstances of individual cases, to provide timely knowledge of circumstances that would adversely affect contract performance and the liquidation of progress payments, and timely opportunity for any action that may be appropriate for the protection of the Government. Particular care must be taken to assure that the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or that the contractor has adequate resources to complete the contract if the unpaid balance of the contract price is inadequate to cover costs of completion.

§ 163.90–2 Use of progress payments by contractors.

It is expected that the contractor will use the progress payments made by the Government, or equivalent amounts of money, to pay the costs incurred in the performance of the contract under which progress payments are made.

§ 163.91 Adjustments; retroactive price reduction; refunds.

When a retroactive price reduction has been made effective, i.e., by supplemental agreement or by unilateral determination pursuant to the price redetermination provision of the contract, the last sentence of §§ 163.79–1(b) and 163.79–2(b) requires adjustments so that the amount of unliquidated progress payments and the amounts paid or payable for supplies or services accepted will give effect to the price reduction. In this situation, the retroactive price reduction means that too much has been paid or billed for deliveries, and that from those delivery billings too much has been applied as a reduction of the unliquidated progress payment balance. The necessary adjustments would be (a) recomputation of total cash delivery payments on the basis of the reduced billing price resulting from the retroactive price reduction, and repayment by the contractor of the difference between the total recomputed payments and the total cash delivery payments that had been made, and (b) increase of the unliquidated progress payment balance by the excess of the total amounts previously applied to reduce the unliquidated progress payment balance over the amounts that would have been applied to reduce the unliquidated progress payment balance if the reduced delivery prices had been in effect from the date from which the redetermination is applicable. This same principle of upward adjustment of the unliquidated progress payment balance is also applicable in connection with interim refunds made by contractors pursuant to the provisions of incentive and price redetermination contracts, and in connection with voluntary refunds on such contracts.

§ 163.92 Maximum unliquidated amount.

In all cases where the contract price is sufficient to cover all costs of complete performance, and liquidation of progress payments is effected in accordance with §§ 163.79–1(b) or 163.79–2(b), the amount of unliquidated progress payments will never exceed the maximum limit provided by §§ 163.79–1(a)(3)(i) or 163.79–2(a)(3)(i), unless liquidation percentages have been based on cost estimates that are less than actual costs. In such cases, if the contract involves a profit to the contractor, the actual unliquidated progress payment amount will always be less than the maximum limit stated in §§ 163.79(a)(3)(i) and 163.79–2(a)(3)(i) after the first delivery payment unless liquidation percentages have been based on cost estimates that are less than actual costs. So long as performance is satisfactory and there is no reason to believe that the contract

will involve a loss to the contractor or that a liquidation rate fixed pursuant to §§ 163.81–2 or 163.79–2(b) is too low, there will be no need or reason to verify the relationship of the amount of unliquidated progress payments to the maximum limit prescribed by §§ 163.79–1(a)(3)(i) and 163.79–2(a)(3)(i). However, when the rate or quality of performance is unsatisfactory, or the rate of rejections is unduly high, or there is excessive wastage or spoilage, or it appears that unduly low costs have been attributed by the contractor to delivered items, or a loss to the contractor is otherwise indicated, or that the liquidation rate is too low, careful examination should be made to determine whether or not the unliquidated progress payments exceed the maximum amount permitted by §§ 163.79–1(a)(3)(i) or 163.79–2(a)(3)(i). The services of the cognizant audit agency should be utilized to the fullest extent available, together with the services of qualified cost analysis and engineering personnel as required. See § 163.88, Section III, General Instructions, DD Form 1195; and § 163.93–6.

§ 163.92–1 Quarterly statements on price revision contracts.

Many price revision contracts now contain the payment limitation provisions required by Department of Defense Directive No. 4105.7 and substantially as set forth in §§ 7.108 and 7.109 of this chapter. Quarterly statements submitted by contractors pursuant to those contract provisions should be compared from time to time with the Contractor's Request for Progress Payments in order to assure so far as reasonably possible that costs attributed to delivered items on the quarterly statements are excluded from the costs set forth as the basis for unliquidated progress payments on the DD Form 1195 (or on other request forms so long as other forms are in use). If there is apparent disparity, request for completion of Section III of the DD Form 1195 (§ 163.88) would be appropriate.

§ 163.93 Suspension or reduction of payments; general.

In the process of reviewing individual progress payments already existing or hereafter established, action to reduce or slow down progress payments or to increase liquidation rates (unless justified on other grounds, such as overpayments or unsatisfactory performance) should be consistent with contract provisions, and never taken precipitately or arbitrarily. Any such reduction of progress payments on active contracts (other than normal liquidation pursuant to the contract) should be effected only after notice to and discussion with the contractor, and after full exploration of the contractor's financial condition, existing or available credit arrangements, projected cash requirements, effect of progress payment reduction on the contractor's operations, and generally on the equities of the particular situation. Where contract performance is satisfactory, and there is neither overpayment nor anticipated loss, proper progress payments, adequately verified, will be paid promptly when earned and billed in accordance with contract provisions, even though the terms of the particular contract may make the payment discretionary rather than mandatory, and such proper payments will not be held up or denied because of the contractor's lack of need for the payment. §§ 163.79–1(c) and 163.79–2(c) provide that progress payments may be suspended or their rate of liquidation may be increased, whenever any of the circumstances there described are found to exist. The rights reserved to the Government by those paragraphs are for the purpose of protecting the interests of the Government, fostering satisfactory contract performance, and guarding against overpayments and losses. Those paragraphs will be administered with these purposes in mind. Action taken pursuant to those paragraphs will be fair and reasonable under the circumstances of particular cases, and supported by substantial evidence. Findings made under those paragraphs will be in writing.

§ 163.93–1 Failure to comply with contract.

Except for the purpose of correcting overpayments or obtaining amounts due from the contractor, action will not be taken pursuant to §§ 163.79–1(c)(i) or 163.79–2(c)(i) for failure to comply with a requirement of the contract, if such failure has resulted solely from causes beyond the control and without the fault or negligence of the contractor. For examples of such causes, see paragraph (c) of the Default clause in § 8.707(c) of this chapter. Compliance with the material requirements of the contract, within the meaning of §§ 163.79–1(c)(i) and 163.79–2(c)(i) includes compliance with all provisions of the Progress Payment clause.

§ 163.93–2 Unsatisfactory financial condition.

If unsatisfactory financial condition, or failure to make progress, endangering contract performance, as described in §§ 163.79–1(c)(ii) or 163.79–2(2), is found to exist, arrangements reasonably assuring contract completion without loss to the Government will be required in connection with the making of further progress payments and the making of other payments so long as progress payments are unliquidated. Within the meaning of §§ 163.79–1(c)(ii) and 163.79–2(c)(2), performance of the contract includes full liquidation of progress payments. Further payments will be withheld so long as any progress payments remain unliquidated, only upon full consideration of all pertinent facts, and upon concluding that further payments will serve to increase the probable loss to the Government.

§ 163.93–3 Excessive inventory.

When inventory allocated to the contract is found substantially to exceed reasonable requirements (§§ 163.79–1(c)(iii) and 163.79–2(c)(3)), the simplest form of adjustment to correct or avoid overpayment will be to eliminate the costs of such excess inventory from the costs shown in item 7 of the contractor's request set out in § 163.88. If that is not regarded as sufficient in a particular case, or if the adjustment in item 7 of the request will not accomplish full correction, additional deductions, to the extent necessary for the correction, should be made, to liquidate progress payments, incident to billings for payments other than progress payments. Transfer of such excess inventory from the contract should also be required. The expression "reasonable requirements" includes a reasonable accumulation of inventory for future use to assure continuity of operations.

§ 163.93–4 Delinquency in payment of costs of performance.

The contractor's delinquency in payment of costs of contract performance in the ordinary course of business (§§ 163.79–1(c)(iv) or 163.79–2(c)(5)) may be an indication of unsatisfactory financial condition or other circumstances endangering contract performance and involving probability of loss to the Government. If such delinquency is not connected with poor financial condition that is so unsatisfactory as to endanger contract performance or to involve reasonably foreseeable loss to the Government, further progress payments and other payments will not necessarily be denied to protect the unliquidated progress payments and minimize risks of additional losses, and payments may be continued at the contract rate, or in reduced amounts, in connection with appropriate arrangements to (a) cure the contractor's delinquencies in payment of his costs of contract performance, (b) avoid further delinquencies, and (c) reasonably assure completion of the contract without loss to the Government. (See also, § 163.93–3.) Amounts claimed by subcontractors, suppliers and others, but disputed in good faith by the contractor, should not be considered delinquent until determined due by a court (or by arbitration if applicable). However, any such disputed amounts shall be excluded from costs of performances so long as they are disputed.

§ 163.93–5 Fair value of undelivered work.

In connection with determining the relation of the amount of unliquidated progress payments to the fair value of the work accomplished on the undelivered portion of the contract (§ 163.79–1(c)(v) or § 163.79–2(c)(vi)) the principles stated in § 163.92 are applicable. In determining action, if any, to be taken, the contracting officer (utilizing available audit, engineering, inspection, and cost analyst services) will give full consideration to the degree of completion of contract performance, the quality and amount of work performed on the undelivered portion of the contract, the amount of work remaining to be done and the estimated costs of completion of performance, and the amount remaining unpaid under the contract. If the contracting officer finds that the fair value of the work done under the undelivered portion of the contract, in relation to the contract price, is less than the unliquidated progress payments, his actions will be governed by the principles stated in §§ 163.93–2 and 163.93–4. This

fair value could not exceed the contract price of undelivered work under the contract, less the estimated total future costs of completion of the contract. When this fair value is found to be less than the amount of the unliquidated progress payments, all further payments on the contract will be controlled in such a manner as to hold the unliquidated progress payments within the fair value of the work done on the undelivered portion of the contract. See also § 163.94–1.

§ 163.93–6 Erroneous cost estimates.

When liquidation percentages (§§ 163.79–1(b) and 163.79–2(b)) lower than those called for by § 163.81–1 are established pursuant to § 163.81–2, it may occur that actual costs and future costs of performance are higher than the estimated costs used to establish liquidation rates. In such cases (§§ 163.79–1(c)(vi) and 163.79–2(c)(4)) appropriate increase of the liquidation percentage will be necessary to adjust for any under-liquidation that may have occurred, to bring the amount of unliquidated progress payments within the limits of §§ 163.79–1(a)(3) or 163.79–2(a)(3), and to assure the adequacy of future liquidations. Increase of the liquidation percentage will also become necessary even though § 163.81–2 has not been applied in fixing the liquidation percentage, when progress payments are based on costs of direct labor and material only (§ 163.79–2) or any limited cost base (§ 163.80–5), and actual costs forming the base for progress payments are higher than the estimated eligible costs used in establishing the liquidation percentage.

§ 163.94 Government titles.

Since the clauses in § 163.79 give the Government title to all of the materials, work in process, and finished goods under contracts after the making of progress payments thereon, care should be taken to assure, to the extent reasonably necessary, that the title to the Government will be free of all encumbrances. The procedure in this respect will necessarily vary with the particular circumstances of individual cases. Ordinarily, in the absence of reason to believe that the Government title may be subject to encumbrance, the contractor's certificate will be relied on. If any arrangements or conditions are found that would impair the contractor's right of disposition of the property affected by the progress payments, appropriate arrangements should be made to establish and protect the Government title. The existence of any such encumbrance is a violation of the contractor's obligations under the contract.

§ 163.94–1 Loss, theft, destruction, or damage.

Sections 163.79–1(e) and 163.79–2(e) are not intended to apply to normal spoilage. The risk of loss as to property affected by the progress payment clause is on the contractor, except to the extent that by some special provision of the contract (such as that relating to aircraft in the open) the Government shall have expressly assumed the risk of loss. Such express assumption of risk by the Government is not made in the Progress Payment clause, the Default clause, or the Termination clause. Because of problems of administering the contract, especially those connected with property responsibility and inventory control, the risk of loss on property to which the Government holds title because of progress payments must be on the contractor to the same extent that it would be if the contractor held title to the property. This risk of loss carries with it the accompanying duty to repay to the Government the amount of unliquidated progress payments based on cost allocable to lost, stolen or destroyed property or to the damaged portion of the property. If the Government has expressly assumed particular risks of loss, then, to the extent of such express assumption of risk by the Government, the contractor would not be obligated to repay to the Government the amount of unliquidated progress payments based on costs allocable to such lost, stolen, destroyed, or damaged property. See, however, §§ 163.79–1(c)(v) and 163.79–2(c)(6), as to future payments on the contract after such loss, damage, theft, or destruction.

§ 163.94–2 Government-furnished property.

Contract provisions referring to or defining liability for Government-furnished property do not apply to property to which the Government shall have acquired title solely pursuant to the provisions of the Progress Payment clause (§§ 163.79–1(d) or 163.79–2(d). Property to which the Government has acquired title solely pursuant to the Progress Payment clause is not subject to appendixes B and C (§§ 30.2 and 30.3 of this chapter).

§ 163.94–3 Special tooling.

When the contractor furnishes special tooling, as defined in § 13.101–5, pursuant to a special tooling clause (e.g., § 13.504 of this chapter), and such special tooling is not to be delivered to the Government as an end item under the contract, the handling and disposition of such special tooling will be governed by the special tooling clause of the contract, even though title to such special tooling is held by the Government pursuant to the progress payment clause of the contract.

§ 163.94–4 Termination for convenience of the Government.

After the giving of notice of termination under contract provision for Termination for the Convenience of the Government, the property to which the Government has title pursuant to the Progress Payment clause and which is a part of termination inventory will be acquired or disposed of in accordance with the provisions of the termination clause of the contract and of applicable laws and regulations. The acquisition or disposition of such termination inventory shall be governed by the termination clause, even though title to all or a portion of such inventory is in the Government pursuant to the progress payment clause of the contract.

§ 163.94–5 Scrap; excess property.

(a) In the course of proper performance of contracts, contractors are permitted to sell or otherwise dispose of current production scrap in the ordinary course of business, notwithstanding the Government's title under the progress payment clause. Permission of the contracting officer for such disposal of scrap is not required. With the permission of the contracting officer and on terms approved by him, contractors may also acquire or dispose of materials, inventories, or work in process to which the Government has acquired title pursuant to the progress payment clause of the contract, including transfer of such property to other work of the contractor. Proceeds of scrap disposal will be credited against the costs of contract performance. Costs allocable to property, other than scrap, so transferred from the contract will be eliminated from the costs of contract performance, and the contractor shall be required to repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred from the contract.

(b) When (1) the contractor has completed all work called for by the contract, and (2) such work has been delivered to and accepted by the Government, and (3) progress payments made under the contract have been fully liquidated, and (4) the contractor has fully performed all its obligations under the contract (including the making of any payments to which the Government may be entitled under the contract, and including compliance with any other provisions of the contract, such as the termination clause or the special tooling clause or the Government-furnished property clause), any excess property remaining is to be regarded as having not been allocated or properly chargeable to the contract under sound and generally accepted accounting principles and practices, and thus outside the scope of the progress payment clause which would have vested title in the Government. Accordingly, the contractor holds title to such excess property and may deal with it as he desires.

§ 163.95 Consideration for progress payments, awards.

When a progress payment clause is included at the inception of a contract, no separate consideration is charged for the Progress Payment clause, and there shall be no provision for interest or other specific charge for progress payments, or for a reduction in payments (other than any agreed discount for prompt payment) by reason of the making of progress payments. The worth of the Progress Payment clause to the contractor is expected to be reflected in one or both of (a) a bid or negotiated price that will be lower than such price would have been if provision had not been made for progress payments, or (b) contract terms and conditions, other than price, that are more beneficial to the Government than they would have been if provision had not been made for progress payments.

§ 163.96 Amendments to provide progress payments.

There should be ordinarily no occasion to amend contracts to provide for progress payments unless there has been material change from the circumstances contemplated by the parties when invitations for bids were issued or the contract was entered into without progress payment provision. However, cases do occur (a) in which the actual lead time or preparatory period between the beginning of work and the first delivery substantially exceeds the estimated lead time and in fact runs or will run over six months (§ 163.72), or (b) in which unusual circumstances bring about unexpected substantial accumulation of predelivery costs having material impact on the contractor's working funds (§ 163.74). These cases may arise from occurrences such as (1) uncertainties or errors in specifications, (2) contract change notices, (3) Government delays in testing, inspection, furnishing of material or equipment, furnishing of stock numbers, packaging or shipping instructions or shipping documents, or completion of contract supplements, (4) stretch-outs or stop-work orders, (5) performance difficulties of subcontractors or suppliers, and (6) causes beyond the control and without the fault or negligence of the contractor, of the kinds mentioned in § 8.707(c) of this chapter. In these kinds of cases, requests of contractors for amendments to provide progress payments should be considered promptly, in the light of the circumstances then existing. If the circumstances then existing approximate conditions under which progress payments would have been properly provided in conformity with this part at contract inception, if the new circumstances had been foreseen, progress payments should be provided by amendment. In this connection, see particularly §§ 163.15, 163.17, 163.18, 163.19, 163.20, 163.23, 163.23–1, and 163.97.

§ 163.97 Consideration for amendments providing for progress payments.

Contracts may not be modified except in the interest of the Government. Contracts which do not provide for progress payments may be amended (§ 82.85–5) to provide for progress payments only when the amendment provides new and valuable consideration moving to the Government. Appropriate price reduction may provide this consideration. In the varying circumstances of individual cases, the consideration for progress payments need not necessarily be monetary. Agreements by the contractor, incorporated in such an amendment, for the benefit of and substantially advantageous to the Government, may constitute sufficient consideration for an amendment providing for progress payments. When estimated financing costs have been included as an element (whether or not identified) in the contract price of a contract not providing for progress payments, it is fair to expect elimination of the applicable portion of that element of the price when progress payments are provided by amendment. The fair and reasonable consideration for the progress payment amendment should approximate in value as nearly as practically ascertainable the amount by which the contract price would have been smaller if a Progress Payment clause had been contained in the contract in the first instance. In the absence of definite information on this point, pertinent factors for estimating the fair and reasonable amount of consideration would include (a) the amounts of progress payments expected to be outstanding for estimated periods of time, (b) the cost of equivalent working funds to the contractor, and (c) the estimated profit rate expected to be earned by contract performance. If not accomplished by a contract price reduction, other concessions or agreements by the contractor, advantageous to the Government and incorporated in the amendment, may be fairly evaluated and accepted as being of value reasonably equivalent to a price reduction. This consideration should be such as is fair, equitable and reasonable in the light of the circumstances of each case. See § 163.96. This consideration should be for the progress payment amendment, and there shall be no provision for interest or other specific charge for progress payments, or for a reduction in payments after the progress payment amendment (other than any agreed discount for prompt payment) by reason of the making of progress payments.

PART 165—PAYMENTS ON INCENTIVE-TYPE AND PRICE REDETERMINATION-TYPE CONTRACTS

165.1 Purpose.
165.2 Policy and action.
165.3 Refunds and adjustments.
165.4 Contract administration.

AUTHORITY: §§ 165.1 to 165.4 issued under sec. 202, 61 Stat. 500, as amended, sec. 2202, 70A Stat. 120; 5 U.S.C. 171a, 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 2381, 2383, 70A Stat. 127–133, 136, 137; 10 U. S. C. 2301–2314, 2381, 2383.

§ 165.1 Purpose.

It is the purpose of this part to assure payment of amounts fairly due for items delivered and accepted under incentive-type and price redetermination-type contracts, to reduce the need for refunds, by contractors under such contracts, to facilitate timely adjustment of provisional billing prices and prompt completion of final pricing under these types of contracts, and to reaffirm the policy on progress payments.

§ 165.2 Policy and action.

(a) To accomplish the purpose of this part, all new contracts of the incentive-type and price redetermination-type, all definitive contracts of the incentive- or price redetermination-type replacing or superseding letter contracts, all amendments providing an incentive- or price redetermination-clause in contracts not previously containing such a clause, and all amendments to contracts of the incentive- or price redetermination-type providing for new or additional procurement, entered into on or after July 1, 1956, shall contain one or the other of the provisions set out in subparagraphs 1 or 2 of this paragraph.

(1) Incentive-type contracts:

Notwithstanding any provision of this contract authorizing greater payment, adjustments and refunds shall be made if the total of all amounts billed and paid or payable under this contract for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) until final price revision has been made shall exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided; (1) the total contract price of all items delivered to (or services performed for) and accepted by the Government for which final prices have been established, and (2) the total amount of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable solely to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established, and (3) the total amount of the established target profit allocable by direct proportion to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established—increased or decreased in accordance with the incentive profit formula of this contract when the amount of costs stated in (2), above, differs from the applicable target costs. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed for and accepted by the Government) under this contract, and as of the end of each quarter, the Contractor shall submit a statement setting forth the respective amounts of each of the three numbered items next above, together with the total amount of all billings for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) under this contract as of the end of each quarter. If on any quarterly statement these total billings exceed the sum of the three numbered items above, this gross excess less any applicable tax credit under Section 1481 of the Internal Revenue Code of 1954 shall, after deduction of the total refunds (cash or credit memoranda not including any tax credits under the Internal Revenue Code) theretofore made, be paid immediately by the Contractor to the Government or credited against existing unpaid billings covered by such statement; provided that if any portion of such gross excess (less all tax credits under the Internal Revenue Code) has been applied to the liquidation of progress payments, such amount may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payment clause of this contract, instead of making direct refund thereof.

(2) In price revision—or redetermination-type contracts, not of the incentive type:

Notwithstanding any provision of this contract authorizing greater payment, adjustments and refunds shall be made if the total of all amounts billed and paid or payable under this contract for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments), until final price revision has been made to the full extent permitted by this contract, shall exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided; (1) the total contract price of all items delivered to (or services performed for) and accepted by the

Government for which final prices have been established, and (2) the total amount of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable solely to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established, and (3) the total amount of interim profit used in establishing the initial contract price and allocable by direct proportion to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed for and accepted by the Government) under this contract, and as of the end of each quarter, the Contractor shall submit a statement setting forth the respective amounts of each of the three numbered items next above, together with the total amount of all billings for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) under this contract as of the end of each quarter. If on any quarterly statement these total billings exceed the sum of the three numbered items above, this gross excess (less any applicable tax credit under Section 1481 of the Internal Revenue Code of 1954) shall, after deduction of the total refunds (cash or credit memoranda not including any tax credits under the Internal Revenue Code) theretofore made, be paid immediately by the Contractor to the Government or credited against existing unpaid billings covered by such statement; provided that if any portion of such gross excess (less all tax credits under the Internal Revenue Code) has been applied to the liquidation of progress payments, such amount may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payment clause of this contract, instead of making direct refund thereof. When, after submission by the Contractor of cost data and price-redetermination offer, the Contractor and the Contracting Officer (a) have agreed in writing upon revised billing prices in the light of the cost experience and anticipated future trend (and provided that such revised prices are not higher than the smallest of (i) the existing contract price, (ii) the Contractor's price-redetermination offer and (iii) a price based upon the most recent quarterly statement), and (b) the contractor agrees to promptly make the necessary adjustments to bring payments for past deliveries of items into alignment with the revised billing prices, and (c) so long as the Contractor bills at the agreed revised billing prices (or lower prices thereafter negotiated as final prices preliminary to confirmation by formal contract supplement), the prices so agreed upon or negotiated shall be deemed to be final prices for the purpose of this paragraph until final prices are established by supplement. For any quarter in which only the numbered (1), above, is applicable, the Contractor may furnish a written statement to that effect instead of the quarterly statement above required.

(b) In connection with amendments providing for new procurement, and amendments providing an incentive- or price redetermination-clause in contracts not previously containing such a clause, the above provisions shall be made applicable to the entire contract.

(c) Where the contracting officer has discretion to control payments through withholding provisions under an existing contract of the incentive- or price redetermination-type not containing the above provisions, the contract shall be administered hereafter, to the maximum extent permitted by such withholding provisions, so that on and after January 1, 1956, the total aggregate payments will be limited in the manner provided in paragraph (a) of this section.

(d) In the case of outstanding contracts of the incentive-type or price redetermination-type, where payments cannot be limited within a reasonable time as provided above, the contracting officer shall take prompt action to obtain by mutual agreement amendments of such contract incorporating the above provisions.

(e) Ordinarily, unless the contracting officer has good cause to doubt or question the accuracy of statements furnished in accordance with paragraph (a) of this section, such statements will be relied upon and prompt payments under the contract will continue to be made pending any post-audit or post-review that may be necessary to protect the interests of the Government.

§ 165.3 Refunds and adjustments.

(a) (1) It is essential in all cases that the amount of any indebtedness of contractors to the Government be ascertained promptly, and that the amount of each contractor's indebtedness to the Government be collected expeditiously.

(2) Government personnel will take prompt action so that amendments and supplemental agreements, where appropriate, will be prepared expeditiously and executed without delay.

(b) For use in expediting and controlling adjustments and refunds, current inventory and control lists shall be established and maintained with regard to all incentive-type and price redetermination-type contracts. Aggressive and continuing efforts shall be made to eliminate any unnecessary delays.

(c) All incentive-type and price redetermination-type contracts shall be reviewed systematically and periodically to obtain voluntary interim billing price adjustments and prompt refunds as appropriate. The making of voluntary refunds in anticipation of retroactive price reductions shall be systematically encouraged. No proposed voluntary refund shall be refused or delayed, and all such refunds shall be tendered and accepted without prejudice to final pricing. In connection with voluntary refunds, minimum refunds proposed by contractors in connection with final pricing proposals, and refunds incident to quarterly statements, contractors shall not be required to furnish concurrent itemization of adjustments to be made on past billings, nor to furnish adjusted bills concurrently. Such adjustments as may be essential in connection with refunds will be accomplished by appropriate Government personnel, with such information as may be essential from contractors after refunds are made, and the making, acceptance and deposit of refunds will not be delayed pending the making of any necessary accounting adjustments. When reductions in billing prices are proposed by contractors, they will be made effective immediately without prejudice to further adjustment, and billings voluntarily reduced by contractors shall if otherwise proper be paid at the reduced amounts without awaiting contract amendments.

§ 165.4 Contract administration.

(a) The contracting officer will exercise every effort to bring about prompt redetermination of prices and setting of firm target prices by vigilant and timely attention to the contract administration aspects of each contract, and nothing contained herein will diminish his responsibilities.

(b) Section 1481 of the Internal Revenue Code of 1954 and Section 3806 of the Internal Revenue Code of 1939 provide for certain tax credits in connection with contract price refunds. The contract provisions set out in this part and in superseded Part 84 (32 CFR, 1955 Supp.) do not alter the effect of those statutory provisions. Contracts containing either one of the provisions set out in § 84.3 (a) of superseded Part 84 (32 CFR, 1955 Supp.) shall be administered in such manner as to allow this statutory tax credit whenever applicable under the circumstances. Whenever there is a "gross excess" under those contract provisions, the amount of such tax credit shall be allowed in partial settlement of the gross excess determined without reference to such tax credit, and only the remainder of the excess after such tax credit allowance shall be subject to refund by the Contractor. Also, applicable previous tax credits shall be excluded in computing refunds previously made, and the amount of tax credits shall be deducted from the "gross excess" in computing the amount that may be added or restored to the unliquidated progress payment amount.

(c) It was intended by superseded Part 84 (32 CFR, 1955 Supp.) that subject to the quarterly adjustment required by the contract provisions set out therein, payments at contract billing prices would be made before submission of the first required quarterly statement, and thereafter during the intervals between quarterly statements. Hence, contracts containing the provisions required by superseded Part 84 (32 CFR, 1955 Supp.) will be administered in the same manner as if they contained the first sentence of the contract provisions set out above.

PART 167—UNIFORM NEGOTIATION FOR REIMBURSEMENT OF INDEPENDENT RESEARCH AND DEVELOPMENT COSTS

Sec.
167.1 Purpose.
167.2 Background.
167.3 Establishment of the Armed Services Research Specialists Committee.
167.4 Single assignment for joint negotiation of research and development costs.
167.5 Procedures.

AUTHORITY: §§ 167.1 to 167.5 issued under R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202.

§ 167.1 Purpose.

The purpose of this Part 167 is to (a) provide a method for the joint negotiation of reasonable and uniform cost allowance of independent research and development expense of certain contractors performing work for more than one military department; (b) establish the Armed Services Research Specialists Committee which will, when requested by the sponsoring military department, review and assure that contractors have made a proper segregation between their independent research and their independent development programs and which will report to the sponsoring military department the determinations of the Committee concerning the scientific and technical factors which influence the extent to which such programs should be supported; and (c) provide for the assignment of responsibility to a single military department to act as the sponsoring department in the conduct of joint negotiations on the allowability of such contractor's independent research and development costs.

§ 167.2 Background.

(a) Section 15.107 of Subchapter A of this Title 32 (Rev. 2 November 1959) provides for "advance understandings on particular cost items," including "research and development," particularly those aspects relating to "reasonableness and allocability." Specifically, it provides in pertinent part:

In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective contractors, particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by contracting officers individually, or jointly, for all defense work of the contractor, as appropriate.

(b) Section 15.205–35 of Subchapter A of this Title 32 (Rev. 2 November 1959) covers allowability of "Research and Development" Costs, and includes:

(h) The reasonableness of expenditures for independent research and development should be determined in light of all pertinent considerations such as previous contractor research and development activity, cost of past programs and changes in science and technology. Such expenditures should be pursuant to a broad planned program, which is reasonable in scope and well managed. Such expenditures (especially for development) should be scrutinized with great care in connection with contractors whose work is predominantly or substantially with the Government. Advance agreements as described in § 15.107 of Subchapter A, Title 32 are particularly important in this situation. In recognition that cost sharing of the contractor's independent research and development program may provide motivation for more efficient accomplishment of such program, it is desirable in some cases that the Government bear less than an allocable share of the total cost of the program. Under these circumstances, the following are among the approaches which may be used as the basis for agreement: (i) review of the contractor's proposed independent research and development program and agreement to accept the allocable costs of specific projects; (ii) agreement on a maximum dollar limitation of costs, an allocable portion of which will be accepted by the Government; (iii) an agreement to accept the allocable share of a percentage of the contractor's planned research and development program.

§ 167.3 Establishment of the Armed Services Research Specialists Committee.

(a) An Armed Services Research Specialists Committee is hereby established to review, when requested by the negotiator representing the sponsoring department, the independent research and development programs of defense contractors and to determine whether there has been an adequate segregation between the independent research and independent development programs of such contractors who are doing business with more than one department and who seek to recover the costs of such research and development programs in procurements of the Department of Defense. In carrying out its responsibilities, the Committee will utilize, where appropriate, the services of other research specialists. The Committee shall report and make recommendations directly to the sponsoring department on the scientific and technical factors affecting the basis or extent to which such programs should be supported.

(b) The Committee shall consist of the following:

Office of Secretary of Defense: A designee of the Director of Defense Research and Engineering.

Department of the Army: A designee of the Chief of Research and Development.

Department of the Navy: A designee of the Chief of Naval Research.

Department of the Air Force: A designee of the Commander, Air Research and Development Command.

(c) The designee of the Director of Defense Research and Engineering shall serve as the Chairman of the Committee. The Committee shall be responsible to the Director of Defense Research and Engineering through its Chairman.

(d) When the negotiator has determined that independent research and development program of a contractor warrants review, the Committee shall review such programs to assure that development work is not classified as "research". The Committee shall report to the sponsoring department its findings and recommendations concerning the scientific factors considered to affect the basis or extent to which such research and such independent development relating to procurement within the product line of the contractor, should be supported by the Department of Defense. Where a contractor's normal course of business does not involve production work, the recommendation shall relate to the development work falling within the contractor's field of effort of Government research and development contracts.

§ 167.4 Single assignment for joint negotiation of research and development costs.

(a) The military departments shall agree to and designate a single department (herein called the sponsoring department) to conduct negotiations with the contractor on the allowability of independent research and development costs in all cases where such costs are substantial in amount, a substantial portion of the contractor's business is with the Department of Defense, and the contractor's defense work involves contracts with more than one military department.

(b) The criteria for selection of the sponsoring department shall generally be the service having the preponderant work; cognizant plant assignments; or any other existing relationships which may have bearing on such selection. However, an equitable division of the work among the departments is the desired goal.

§ 167.5 Procedures.

(a) Contractors doing business with more than one department and seeking reimbursement for independent research and development expense may be required to submit copies of a brochure describing each research and development project and indicating the amount of money budgeted for each project. Normally, the brochure will be submitted to the sponsoring department before the beginning of the contractor's fiscal year in which the cost is to be incurred, or at least within the first 90 days of such fiscal year.

(b) The Armed Services Research Specialists Committee will, when requested, review the brochures to assure that there is adequate segregation between research and development. The Committee will then recommend to the negotiator of the sponsoring department the extent to which it is reasonable to support such programs.

(c) The sponsoring department will establish a time and place, if necessary, for the conduct of the negotiations with the contractor. Other procuring activities having contracts with the contractor will be advised of the pending negotiations and invited to participate. If such procuring activities do not have representatives at the negotiation, they will be deemed to have waived participation. The results of the negotiation will, in any event, be binding upon each department having contracts with the contractor.

(d) In the event that the above procedures have not been effectuated prior to the incurring of costs by the contractor for an independent research and development program, such procedures are available and are to be used in a later review.

SUBCHAPTER F—TRANSPORTATION

PART 171—POLICY GOVERNING TRANSPORTATION AND ACCOMMODATIONS OF MILITARY PERSONNEL AND THEIR DEPENDENTS, CIVILIAN EMPLOYEES AND THEIR DEPENDENTS, WHEN TRAVELING VIA COMMERCIAL, GOVERNMENT OR PRIVATE TRANSPORTATION

Sec.
171.1 Purpose.
171.2 Scope and applicability.
171.3 Air transportation.
171.4 Land transportation.
171.5 Sea transportation.

AUTHORITY: §§ 171.1 to 171.5 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 171.1 Purpose.

To establish a uniform Department of Defense policy governing transportation and accommodations, as set forth in §§ 171.3 to 171.5, for military personnel, their dependents, civilian employees and their dependents when traveling via commercial, government or private transportation within, to, from, or outside the continental United States at Government expense. Basic authority for the movement of military personnel and their dependents is contained in the Career Compensation Act of 1949 as amended (63 Stat. 813), implemented by the Joint Travel Regulations. Basic authority for movement of civilian employees and their dependents is contained in section 1 of the Administrative Expenses Act of 1946, as amended (60 Stat. 806), implemented by Standardized Government Travel Regulations promulgated by the Bureau of the Budget.

§ 171.2 Scope and applicability.

(a) *Commercial transportation.* (1) Commercial transportation service will be employed for the movement (within, to, from, or outside the United States) of personnel when such service is available or readily obtainable and satisfactorily capable of meeting military requirements, except as provided in paragraph (b) of this section.

(2) When it is determined that commercial transportation will be provided for travel to, from or outside the United States, aircraft and ships registered under the laws of the United States will be used unless the nonavailability of such aircraft or ships, or the exigencies of the mission, require the use of aircraft or ships registered under foreign flag (aircraft registered under laws of the United States and operated under certificates or permits held by foreign air carriers will be considered foreign flag carriers).

(b) *Government transportation.* Consistent with the chartered responsibilities of Military Sea Transportation Service and Military Air Transport Service to provide transportation service for all military agencies, the employment of commercial transportation to, from, between and within areas outside the United States shall not take precedence over the efficient and economic utilization of the military-owned transportation resources of Military Sea Transportation Service and Military Air Transport Service which have been approved by the Secretary of Defense as essential to national security.

(c) *Private transportation.* (1) Private transportation may be used for travel to be performed at personal expense on a reimbursable basis, by military personnel and their dependents within the continental United States or between the United States and Alaska, Canada (including the Province of Newfoundland), and Mexico, or

(2) When travel is authorized to be performed by privately owned conveyance by civilian employees and their dependents on a reimbursable basis.

(d) *Minimum standards.* Nothing herein will be construed as preventing passengers from accepting accommodations with less than stated minimum standards as shown in §§ 171.3 to 171.5 when they meet the requirements of the Services and/or the traveler. Also, nothing in this part will be construed as preventing the Government from furnishing accommodations with less than stated minimum standards for military and civilian personnel when it has been determined by the Service concerned that exigencies of the service require use of such accommodations.

(e) *Civilian employees traveling at government expense.* Civilian employees will not be required to travel via any particular mode of transportation, commercial or military, when the travel order includes a specific statement excluding such mode of transportation. The official requesting the order shall be responsible for this statement after consideration of justification presented by the employee.

(f) *Selection of mode of transportation to be used.* All orders or other travel instructions which authorize a choice or determination between more than one mode of travel will be interpreted by the transportation officers in accordance with these instructions. In cases where two or more modes are available, the service (or transportation officers thereof) sponsoring the travel will determine the mode to be used, giving due consideration to all the facts in the case, including the desires of the traveler.

§ 171.3 Air transportation.

(a) *Commercial air transportation—*(1) *Use of scheduled air carrier within the continental United States.* (i) Individuals will be provided first-class air transportation, which is offered to the general public as first-class.

(ii) Persons traveling in a group travel status of 3-to-14 will be provided coach class or tourist air accommodations when available and the service and schedule meets the requirements. If coach class or tourist air accommodations are not available first-class accommodations will be provided.

(iii) Persons traveling in groups of 15 or more will be provided transportation via scheduled air carriers meeting the standards of service required in Part 184 of this subchapter. Arrangements for the movement of 15 or more persons will be made by the appropriate headquarters designated by the military service concerned.

(2) *Use of scheduled air carriers to and from and outside the continental United States.* (i) Military and civilian personnel traveling in an individual status or in groups of 14 or less will normally be provided first-class air transportation.

(ii) Persons traveling in groups of 15 or more will be provided accommodations in accordance with the standards of service set forth in Part 184 of this subchapter. Arrangements for the movement of 15 or more persons will be made by the appropriate headquarters designated by the military service concerned.

(3) *Use of sleeper-type aircraft, within, to and from and outside the continental United States.* (i) When the use of sleeping accommodations are necessary for the successful accomplishment of the mission, the travel orders will include such authorizations.

(ii) When sleeping accommodations are authorized, sleeping accommodations of the lowest rate in effect on the aircraft to be utilized will be furnished. If, at the time reservations are made, sleeping accommodations of the lowest rate are not available, sleeping accommodations of the lowest rates which are available will be furnished.

(4) *Use of supplemental carriers.* (i) Services provided by Supplemental Air Carriers are considered coach-type air transportation and do not constitute first-class accommodations. Supplemental Air Carriers may be considered for individual or group travel of 14 or less persons subject to the following conditions:

(*a*) The schedule of the proposed flight is satisfactory and will assure arrival to meet requirements of the travel orders.

(*b*) Accommodations on the aircraft to be used are considered comparable to recognized standards of coach-type service with respect to comfort and sanitation, and

(*c*) Use of such supplemental air carriers otherwise meets military requirements and is acceptable to personnel in an individual travel status.

(ii) Person traveling in groups of 15 or more within the Continental United States will be provided accommodations meeting as near as possible the standards of the Joint Military Passenger Agreements with the Air Carrier Associations.

(iii) Persons traveling in groups of 15 or more to, from, and outside the Continental United States will be provided accommodations in accordance with the standards set forth in Part 209 of this subchapter.

(5) *Use of Supplemental Air Carriers, to, from, and outside the United States.* The services of Supplemental Air Carriers may be considered for group travel of 15 or more. The accommodations provided will be in accordance with the standards set forth in Part 209 of this subchapter.

(b) *Government air transportation within, to and from, and outside the United States—*(1) *Use of Government air transportation.* Government air

transportation includes all government-owned, leased, contract or charter aircraft operated by or for one or more of the Military Services.

(i) *Government-owned aircraft.* An aircraft owned by the United States government and operated by the Department of Defense.

(ii) *Government-chartered or Government-contract aircraft.* An aircraft hired from a commercial source for the exclusive use of the Government for one or more flights.

(2) *Accommodations.* (i) As a general rule, transport type aircraft operating on scheduled or semi-scheduled service with troop seats and safety devices is considered adequate, with the following exceptions:

(*a*) When military or civilian personnel are accompanied by dependents.

(*b*) When individuals are of General or Flag rank, or equivalent civilian status.

(ii) Female passengers and dependents with or without accompanying sponsor will be provided air transportation on scheduled aircraft equipped with upholstered seats and enclosed toilet facilities. Should dependents refuse this accommodation, surface transportation will be provided for such persons. Under such conditions a refusal by the dependent to travel by air, when the exigencies of the service dictate that the principal travel by air, may also be considered as waiving the provisions for nonseparation of families.

(iii) Officers of General or Flag rank or civilians of equivalent status, as shown in table of military-civilian relationships contained in Department of Defense Instruction on "Issuance of Identity Cards Required by the Geneva Convention," will be provided air transportation on aircraft equipped with upholstered seats.

(3) *Minimum standards.* On aircraft equipped to carry General or Flag officers or civilians of equivalent status and/or female passengers, dependents and accompanying sponsor, the following minimum standards are established:

(i) Suitable meals will be available for all passengers.

(ii) A reasonable supply of wash water and potable water shall be aboard the aircraft.

(iii) The configuration of seating arrangements shall be similar to that provided aboard flights of the commercial, passengers, scheduled type operations and the seat spacing shall not be less than the average aircoach space provided by scheduled commercial service.

(iv) Suitable facilities for heating food (formulae) for infants will be available.

(v) Seating arrangements shall be provided on a basis of one seat for each individual, including infants.

(vi) Pressurized cabin aircraft will normally be provided for trans-ocean travel.

§ 171.4 **Land transportation.**

(a) *Definitions.* For the purpose of this section the following definitions are applicable:

(1) *Individual travel.* Travel of all persons under orders which are not specifically designated "group travel order."

(2) *Group travel.* Three (3) or more military personnel traveling in a group from the same point of origin to the same destination under one order which is specifically designated "group travel order."

(3) *First-class transportation.* Transportation, exclusive of extra fare trains, which is offered to the general public as first-class.

(4) *Lowest first-class accommodations.* Except as hereinafter specifically provided, a lower standard berth shall be considered the lowest first-class rail accommodation for night travel in CONUS.

(5) *Coach-class.* A type of transportation, not affording sleeping facilities, offered by the rail carriers in the CONUS to the general public at a lesser rate and which is normally used for short journeys or day-time travel.

(6) *Bus transportation.* A transportation service, offered to the general public by commercial bus carriers, which is normally used for daytime travel when an entire journey can be completed between the hours of 0600 and 2400 of the same day.

(7) *Night travel.* Any journey which involves travel of four (4) or more hours between the hours of 10:00 p. m. and 6:00 a. m. This definition does not preclude the use of sleeping car service operated between points involving actual running time of less than four (4) hours between the hours specified but allowing occupancy privileges of more than four (4) hours.

(8) *Day travel.* Normally a journey completed from origin to destination between the hours of approximately 6:00 a. m. and 12:00 midnight, including any other journeys not specifically defined as "night travel."

(9) *Member.* Wherever the words "member" or "members" are used in this part, they mean member of the Armed Forces.

(b) *Accommodations.* (1) Members and civilian employees (other than those persons listed in subparagraphs (2), (3), (4) and (5) of this paragraph, including cadets, midshipmen, newly enlisted members traveling from place of enlistment or induction to first duty station, members on temporary disability retired list required to submit to periodic physical examination, members of reserve components upon call to active duty for training and upon relief therefrom, members of Reserve Officers Training Corps when authorized to be furnished transportation to a training camp, and aviation cadets are entitled to:

(i) *For individual travel*—(a) *Day travel by rail.* First-class transportation with one seat in a parlor-car, or sleeping car or lounge car, if available, otherwise to coach-class except as limited by Standardized Government Travel Regulations in the case of civilian employees.

(*b*) *Day travel by bus.* Commercial bus transportation which normally can be completed between the hours of 6:00 a. m. and 12:00 midnight.

(*c*) *Night travel by rail in CONUS, Canada and Mexico.* For journeys, involving one or more nights enroute, first-class transportation and one lower standard berth will be furnished for that portion of the journey where sleeping accommodations are available.

(*d*) *Night travel by rail outside CONUS, Canada and Mexico.* Persons traveling as individuals will be transported in accordance with directives of the oversea commander of the area in which travel is performed.

(ii) *For group travel*—(*a*) *Day travel by rail or bus.* Either rail coach-class transportation or commercial bus transportation, whichever is more advantageous to the Government by reason of the nature of the travel, or service, economy, and sound traffic judgment.

(*b*) *Night travel by rail in CONUS, Canada and Mexico.* For journeys, involving one or more nights enroute; first-class rail transportation, and sleeping accommodations in standard sleeping-cars of the regular section type for the entire journey unless only coach-class accommodations are operated at the beginning or end of the journey. Berth accommodations will be furnished on the basis of sections, two (2) members to a section, that is, equal number of lower and upper berths, but lower berths in sections to extent upper berths are not available in sections, plus lower berth for odd number members, if any. When movement is in special cars containing drawing rooms, the drawing room will be used as a section (one lower and one upper berth), except that the sofa in the drawing room will be used if the use thereof will obviate the operation of an additional sleeping car, the sofa to be used on the basis of one additional lower berth. Whenever special standard sleeping car(s) cannot be made available by the carriers within a reasonable time, accommodations will be furnished, on the same basis as above, in special tourist sleeping car(s).

(*c*) *Night travel by rail outside CONUS, Canada and Mexico.* Persons traveling as groups will be transported in accordance with directives of the oversea commander of the area in which travel is performed.

(2) Members discharged on account of fraudulent enlistment, applicants and rejected applicants for enlistment, registrants and rejected registrants, applicants for flying training, members discharged under other than honorable conditions, and discharged and/or paroled prisoners are entitled to:

(i) *Day travel.* Rail coach-class accommodations or bus transportation, whichever is more advantageous by reason of service and/or economy and sound traffic judgment.

(ii) *Night travel by rail in CONUS, Canada and Mexico.* First-class transportation with one upper standard berth, lower standard berth in sections to be furnished to extent upper berths in sections are not available.

(iii) *Night travel by rail outside CONUS, Canada and Mexico.* Will be furnished transportation as prescribed by the appropriate area commander.

(3) Military prisoners with guards.

(i) *Scope.* When it is determined that commercial transportation be utilized for the movement of prisoners under guard, it is considered desirable that such movement be accomplished in a manner which will permit the least possible contact with the general public. Considering appearance and safety, preventing other passengers from becoming apprehensive, or because of the physical condition of the prisoners, movements will be made in enclosed accommodations, when available, or in special car or chartered equipment. Appropriate certification will be contained in the travel orders for the use of enclosed accommodations.

(ii) *Groups of fourteen or less persons—(a) General.* Groups of fourteen or less persons will normally be moved in regular equipment of the commercial rail carriers. When rail transportation is not available or circumstances preclude its use, regular equipment of the other commercial modes of transportation may be used provided advance arrangements are made with the carrier concerned to accept prisoners.

(*b*) *Day travel.* First class rail transportation and enclosed accommodations in parlor car or standard sleeping car will be furnished the entire journey or for that portion of the journey over which enclosed accommodations are available. When enclosed accommodations are not available, the use of coach-class rail transportation is authorized.

(*c*) *Night travel.* Through first-class rail transportation and enclosed standard sleeping car accommodations, when available, for journeys involving one or more nights enroute. When enclosed accommodations are not available, open accommodations in standard sleeping cars of the section type are authorized.

(iii) *Groups of fifteen or more persons—(a) General.* Groups of fifteen or more persons will normally be moved in special car or chartered equipment. Arrangements for such movements will be in accordance with the special regulations of the several military agencies.

(*b*) *Day travel.* For rail movements, special coaches insuring exclusive occupancy will be provided under the provisions of the Joint Military Passenger Agreement with the rail carriers. Movements by other commercial carriers will be made in chartered equipment.

(*c*) *Night travel.* For rail movements, first-class transportation and special standard sleeping cars of the regular section type insuring exclusive occupancy will be provided for journeys of one or more nights enroute. Movements by other commercial carriers will be made in chartered equipment.

(iv) *Government-owned prison cars.* The provisions of subdivisions (ii) and (iii) of this subparagraph do not preclude the use of Government-owned prison cars, when available.

(4) Absentees, stragglers, deserters, members on authorized leave without funds, and any member who loses his transportation while in travel status or who becomes separated from remainder of his party who are in travel status will be furnished the same class of transportation and accommodations as furnished members under subparagraph (1) (i) of this paragraph, except that, when not traveling under guard, they may, if they so desire, be furnished a cheaper class of transportation.

(5) Patients.

(i) *Individual travel—(a) Day travel, rail.* Will be furnished the same class of transportation and accommodations as furnished under subparagraph (1) (i) (*a*) of this paragraph, except that when the physical condition of a patient requires berth accommodations the responsible medical officer may authorize furnishing a lower standard berth for day travel by certification on the travel orders. (See (*c*) of this subdivision.)

(*b*) *Night travel, rail.* Will be furnished the same class of transportation and accommodations as furnished under subparagraph (1) (i) (*b*) of this paragraph. (See (*c*) of this subdivision.)

(*c*) *Special accommodations.* Whenever it is determined that the type of accommodations provided in (*a*) and (*b*) of this subdivision are not satisfactory due to the condition of the patient, the medical officer may authorize the use of room accommodations for the patient and attendants, if any, by appropriate certification on the travel orders.

(ii) *Group travel—(a) Day travel, rail.* When the physical condition of the patients warrants the use of seats and daylight schedules are available and adequate, first-class rail transportation and a seat for each patient and attendant will be furnished in a parlor car or standard sleeping car. Where the condition of a patient(s) requires berth accommodations the responsible medical officer, by certification on travel orders, may authorize furnishing a lower berth for each such patient for day travel (See (*c*) of this subdivision.)

(*b*) *Night travel.* Patients will be furnished one lower berth or one upper berth each, whichever may be determined by the responsible medical officer, in standard sleeping cars of the regular section type. Attendants will be furnished berth accommodation in the same car with patients. (See (*c*) of this subdivision.)

(*c*) *Exclusive accommodations.* Whenever the responsible medical officer determines that a patient or a group of patients require exclusive accommodations, the provisions of subdivision (i) (*b*) of this subparagraph will apply.

(*c*) *Use of enclosed accommodations for purposes of security.* Whenever it is determined that enclosed accommodations are required for the purposes of security, the head of the military department concerned or such subordinates as he may designate, may authorize or approve the use of a compartment or other enclosed accommodations including any additional transportation required under the tariffs of the carriers for the exclusive occupancy of such accommodations.

(d) *Utilization of extra-fare trains.* An extra fare train will not be utilized for travel unless the authority directing the travel has determined that its use is in the best interest of the Government and the use thereof is authorized in travel orders.

(e) *Dependent travel.* Dependents of members and civilian employees whose transportation is authorized are entitled to:

(1) *For day travel.* First-class rail transportation when available, with a seat in a parlor car or sleeping car on the basis of one individual seat for each dependent, except as limited by Standardized Government Travel Regulations in the case of dependents of civilian employees.

(2) *For Night Travel in CONUS, Canada and Mexico.* First-class rail transportation with sleeping accommodations in a standard sleeping-car on the following basis:

(i) Authorized dependents will be classified into the maximum number of "pairs" and the minimum number of "individuals" and furnished accommodations at the lowest possible cost to the Government. Pairs are defined as follows:

(*a*) Two dependents under 5 years of age, regardless of sex.

(*b*) Two dependents, same sex, under 12 years of age.

(*c*) Wife and one child, either sex, if child is less than 5 years of age.

(ii) *Individuals.* "Individuals" are defined as dependents (other than a dependent father or mother) who cannot be paired because one of them is 12 years of age or over, except for the wife as indicated in subdivision (i) (*c*) of this subparagraph, or the individuals are of opposite sex and one or both are 5 years of age or over.

(iii) *Dependent wife, father or mother.* Authorized accommodations for a dependent wife, except as indicated in subdivision (i) (*c*) of this subparagraph, or a dependent father or mother, are one lower berth each.

(iv) Except as indicated in subdivision (iii) of this subparagraph, authorized accommodations for dependents shall be determined in accordance with the following table. For this purpose, an upper berth shall never be considered adequate for occupancy by two persons regardless of age: [1]

Dependent	Lower berth	Upper berth
1 individual (no other dependents)	1	
2 individuals not capable of being paired	1	1
3 individuals not capable of being paired	2	1
4 individuals not capable of being paired	2	2
1 pair	1	
1 pair and 1 other individual	1	1
1 pair and 2 other individuals	2	1
1 pair and 3 other individuals	2	2
1 pair and 4 other individuals	3	2
2 pairs	2	
2 pairs and 1 other individual	2	1
2 pairs and 2 other individuals	2	2
2 pairs and 3 other individuals	3	2
2 pairs and 4 other individuals	3	3
3 pairs	3	
Each additional individual not scheduled above		1
Each additional pair not scheduled above	1	

[1] As a bedroom can be obtained on one adult railroad ticket, such accommodations will be furnished when available in lieu of berth space when otherwise it would be necessary to furnish a half-fare railroad ticket for a child under 5 years of age to obtain an upper berth.

(3) *For night travel outside continental United States, Canada and Mexico.* Dependents will be transported in accordance with directives of the oversea commander of the area in which the travel is performed.

§ 171.5 Sea transportation.

(a) *Commercial water transportation (not procured en-bloc)*—(1) *Selection of steamship line.* When travel at Government expense is authorized in commercial ships, it is mandatory that such travel be performed on ships registered under the laws of the United States unless the nonavailability of such ships or the necessity of the mission requires the use of a ship registered under foreign flag. Any determination of the need for utilizing a foreign flag ship is under the express provision of section 901 of the Merchant Marine Act of 1936 (49 Stat. 2015, Ch. 858, Title IX). When the time permits, a description of the circumstances should be submitted to the Comptroller General for advance decision prior to procuring transportation in a foreign flag ship. When two or more steamship lines operate ships registered under the laws of the United States between competitive points, consideration will be given to the possibility of dividing passenger business among such competing lines, taking into consideration the proximity and accessibility of ports of embarkation and debarkation to the original starting point and destination, with a view to selecting the steamship line which will meet requirements and provide satisfactory service at the least cost to the Government.

(i) *Classes of accommodations.* Passenger ships provide various classes of accommodations designated first-class, cabin-class, second-class, tourist-class, and third-class. On ships providing only one class of accommodations, such accommodations are normally referred to as first-class or cabin-class. On ships providing two or more classes of accommodations, the class next below first-class whether designated second-class, cabin-class, or tourist-class will be considered as second-class accommodations. Accommodations next below second-class are usually designated third-class or tourist-class accommodations.

(2) *Authorized accommodations for individuals*—(i) *Individual defined.* For the purpose of this part, an individual, excluding categories shown in the Joint Travel Regulations, Chapter 5, Parts B, C, and G, but including those shown in Parts A and F, is defined as a member or civilian employee traveling under one order, or dependents without regard to the number.

(ii) *Authorized accommodations.* (*a*) Members, including categories shown in the Joint Travel Regulations, Chapter 5, Parts A and F, and civilian employees, are entitled to lowest first-class rate accommodations when traveling as individuals. When lowest first-class rate accommodations are not available at the time reservations are made, such persons will be entitled to the lowest first-class rate accommodations available by the facility authorized to be used. When no first-class rate accommodations are available, such persons will be provided the next lowest class accommodations, if available.

(*b*) Dependents are entitled to lowest first-class rate accommodations. When dependents accompany the sponsor or for administrative but not personal reasons they travel at a later date, they are entitled to the lowest first-class rate accommodations available by the facility authorized to be used at the time reservations are made. If delay in travel is for personal reasons, the cost of accommodations in excess of the lowest first-class rate accommodations will not be authorized at Government expense.

(iii) *Authorized accommodations for groups*—(*a*) *Group defined.* For the purpose of this part, a group is defined as a movement of three or more military personnel from the same point of origin to the same destination under one order which is specifically designated as "group travel order." The accommodations authorized for group travel will be equally applicable for categories shown in the Joint Travel Regulations, Chapter 5, Parts B, C, and G, without regard to the number traveling.

(*b*) *Authorized accommodations.* (*1*) Officers and Warrant Officers or civilian employees of equivalent status traveling in a group travel status are entitled to the lowest first-class accommodations available.

(2) Enlisted members or civilian employees of equivalent status traveling in a group travel status are entitled to lowest second-class rate accommodations available at the time reservations are made. When second-class rate accommodations are not available at the time reservations are made, such persons are entitled to the lowest first-class rate accommodations available by the facility authorized to be used. When neither first or second-class accommodations are available, accommodations in third-class or tourist-class (when designated as a class below second-class) will not be used without the specific approval of the appropriate authority in the headquarters of the Military Department concerned.

(iv) *Exclusive use of stateroom for security purposes.* The exclusive occupancy of a stateroom is authorized for security purposes in the transportation of classified documents or Government property, provided specific authority for the exclusive use of a stateroom is contained in the travel orders. The lowest first-class rate stateroom available, which meets the military requirements, will be furnished.

(b) *Commercial water transportation (procured en-bloc by a military agency).* First-class accommodations in commercial ships procured en-bloc on a lease or charter basis are considered to be Government transportation. Second-class, cabin-class, or tourist-class accommodations, when so designated to indicate the class of accommodations next below first-class, similarly procured, are also considered to be Government transportation.

(c) *Military Sea Transportation Service*—(1) *Classes of accommodations.* Ships of the Military Sea Transportation Service provide two classes of accommodations designated cabin-class and troop-class. Cabin-class accommodations in ships of the Military Sea Transportation Service will be considered the equivalent of first-class accommodations in commercial ships. Troop-class accommodations in ships of the Military Sea Transportation Service are primarily designated for military purposes and have no comparable class in commercial ships.

(2) *Authorized accommodations*—(i) *Members and civilian employees.* Male officers, male civilian employees of equivalent status, as shown in table of military-civilian relationships contained in Department of Defense Instruction 1000.1, "Issuance of Identity Cards Required by the Geneva Conventions", female officer members, female enlisted members and female civilian employees are entitled to cabin-class accommodations. Male enlisted members entitled to transportation of dependents at Government expense and male civilian employees of equivalent status when traveling with dependents are entitled to cabin-class accommodations and when traveling without dependents are entitled to troop-class accommodations except that cabin-class accommodations may be furnished provided such assignments can be made without displacing other persons entitled to cabin-class accommodations. Male enlisted members not entitled to transportation of dependents at Government expense and male civilian employees of equivalent status are entitled to troop-class accommodations except that when traveling with dependents cabin-class accommodations may be furnished provided such assignments can be made without displacing other persons entitled to cabin-class accommodations.

(ii) *Dependents.* Dependents of members and civilian employees are entitled to cabin-class accommodations in dependent-carrying troopships.

(iii) *Special categories of Uniformed Personnel.* Midshipmen and cadets of the Service academies are entitled to cabin-class accommodations in dependent-carrying troopships and in austerity troopships.

PART 175—TRANSPORTATION BY MILITARY AIR TRANSPORT SERVICE

Sec.

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AUTHORITY: §§ 175.1 to 175.12 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 175.1 Purpose and scope.

This part prescribes the responsibilities and policies for the movement of traffic on scheduled Military Air Transport Service aircraft. It applies to all agencies utilizing or controlling space on Military Air Transport Service aircraft.

§ 175.2 Definitions.

(a) *Traffic.* Cargo, mail, passengers, and passengers' baggage.

(b) *Revenue traffic.* Traffic for which reimbursement to, or accounting by, the Department of Defense is required.

(c) *Nonrevenue traffic.* Traffic transported in the primary or official interest of the Department of Defense.

(d) *Baggage.* All equipment, clothing, except one overcoat or raincoat, and items of any other kind carried by or accompanying a passenger and not documented as cargo.

(e) *Air movement designator.* A combination of code letters and numbers assigned by the issuing agency as a medium of identification and for the establishment of precedence of movement of traffic.

(f) *Military Air Transport Service aircraft.* As used in this part, only those aircraft of the Military Air Transport Service organization operated for the purpose of performing transport functions (excludes subordinate nontransport services of Military Air Transport Service, such as Air Weather Service, Air Rescue Service, and so forth).

§ 175.3 Uniform.

Military personnel of the armed services will be in uniform when traveling on military aircraft unless civilian clothing is specifically authorized in competent orders.

§ 175.4 Responsibilities.

The Military Air Transport Service, under the command and direction of the Chief of Staff, United States Air Force, is responsible for air transportation for the Department of Defense as directed by the Secretary of Defense. The Director of Transportation, Headquarters, United States Air Force is responsible for monitoring traffic management aspects of the Military Air Transport Service.

§ 175.5 Policy.

In addition to the competent authorities of the Army, Navy, Air Force, Marine Corps, and Coast Guard listed in paragraph (a) of this section, certain orders issued by Canadian authorities will be honored for the purpose of providing military air transportation in accordance with specific directives governing reciprocal transportation between Canada and the United States. This eligibility listing is not to be construed as indicating the relative order of movement. The following is the only traffic authorized to be carried on transport aircraft operated by the Military Air Transport Service:

(a) That traffic which is directed or authorized by written orders issued by competent authorities of the Departments of the Army, the Navy, and the Air Force authorizing air transportation without reimbursement therefor when the traffic is primarily of official concern to the Department of Defense. The determination of whether traffic is primarily of official concern to the Department of Defense is a responsibility of the Secretaries of Defense, Army, Navy, or Air Force, or by delegation of authority to those agencies authorized to establish priority of movement via military air by current Departments of the Army, Navy, and Air Force directives. The priority of traffic movement shall be determined by the Department concerned in accordance with the classification of military necessity established by the individual Departments. Assigned air movement designator will be included in all orders, movement directives, or shipping documents for all traffic to or from the continental United States or between areas outside the continental United States.

(b) That traffic which is directed or authorized by competent authorities of the Departments of the Army, the Navy, or the Air Force, with reimbursement therefor, in accordance with the provisions of applicable law, when the traffic is of official concern to the executive departments or agencies, or to the legislative or judicial branches of the Government. Requests for transportation in this category should be directed to the Chief of Staff, United States Air Force, with procurement authority chargeable or a clear indication of the method by which reimbursement is to be accomplished.

(c) That traffic which is certified by the interested Department or agency as being in the national interest may be furnished air transportation to or from places outside the continental United States with reimbursement therefor. In cases covered by this section, it will be within the purview of the Secretaries of the Army, Navy, or Air Force to refuse to authorize the transportation if deemed advisable. As a matter of general policy, the aviation organizations of the armed services will not be placed in a position of competing with United States commercial air transportation.

§ 175.6 Categories.

Categories of traffic eligible for transportation via aircraft of the Military Air Transport Service will be limited to traffic moving under competent Army, Navy, or Air Force orders, or movement authorities directing or authorizing air transportation subject to the conditions set forth in paragraphs (a) through (e) of this section:

(a) *Personnel, space requirement, nonrevenue*—(1) *Category 1.* Military personnel of the Department of Defense, including United States Coast Guard, on active duty when traveling under competent permanent change of station, temporary duty, or emergency leave orders, including all foreign military personnel, sponsored by the Secretaries of Defense, Army, Navy, or Air Force.

(2) *Category 2.* Civilian employees of the Department of Defense when traveling under competent permanent change of station orders or properly executed transportation agreements, temporary duty, or emergency leave orders including all civilians specifically sponsored by the Secretaries of Defense, Army, Navy, or Air Force.

(3) *Category 3.* Civilian personnel of Government contractors and technical advisors to military authorities, when engaged in activities of the Department of Defense which require such air travel. Such transportation may be furnished when specified in the contract or determined to be in the best interest of the Department of Defense.

(4) *Category 4.* Members of Congress and other Federal officials when the travel is in the primary interest of the Department of Defense and when authorized by the Secretary of Defense or one of the military departments.

(5) *Category 5.* Military personnel of the National Guard and Reserve Components when traveling on matters of official concern to the Department of Defense.

(6) *Category 6.* Dependents of military and civilian personnel of the Department of Defense traveling pursuant to competent permanent change of station orders or other competent travel authorizations, including such dependents when traveling to and from the continental United States or between oversea areas for medical reasons.

(7) *Category 7.* American Red Cross personnel when serving with the Department of Defense in oversea areas, provided that they are in uniform and such travel is in the performance of Red Cross duties incident to change of station or temporary duty. Emergency leave travel is authorized between oversea areas and zone of interior aerial ports. Military air travel will not be authorized within the zone of interior.

(8) *Category 8.* Dependents of military and civilian personnel of the Department of Defense stationed overseas when traveling to or from the United States for the purpose of attending school (limited to one roundtrip each school year).

(9) *Category 9.* Commissioned officers of the Public Health Service detailed for duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard, or when traveling in connection with matters primarily of official concern to the Department of Defense.

(10) *Category 10.* British, Canadian, and Australian exchange officers on duty with the Army, Navy, Air Force, or Marine Corps while in a duty status, upon presentation of orders issued by competent authority.

(11) *Category 11.* Dependents of officials of the other executive departments or agencies, of the judicial branch, or of the legislative branch when accompanied by their principals when authorized by the Secretary of Defense.

(12) *Category 12.* Military personnel dependents in a patient status in the continental United States whose movement from one military hospital to another within the continental United States has been authorized, or who are initially admitted to a military hospital. When so determined by the hospital commander originating the movement of minor dependents (patients), an adult dependent member of the immediate family may be designated as an attendant and is authorized transportation.

(13) *Category 13.* Any person in case of an emergency involving catastrophe or possible loss of life when other means of suitable transportation are not available, feasible, or adequate.

(14) *Category 14.* Any other individual not listed in this paragraph when traveling on competent orders authorizing military air transportation in connection with matters primarily of official concern to the Department of Defense.

NOTE: The following are limiting conditions governing travel of certain categories of personnel:

(a) Dependents who are beyond the 188th day of pregnancy will not be accepted for air transportation.

(b) Infants under six weeks of age will not be accepted for air transportation.

(c) Children under 12 years of age will not be accepted for air transportation unless accompanied by parent or other responsible adult designated by the parent.

(b) *Personnel, space requirement, revenue*—(1) *Category 15.* Persons traveling in the interest of other governmental departments or agencies, with reimbursement by the department or agency concerned.

(2) *Category 16.* Civilian employees of the Department of Defense in areas outside the continental United States who are recruited from outside the duty area on the basis of a signed employment agreement providing for return transportation and who are separated at an oversea area under circumstances that do not convey eligibility for return transportation at Government expense for the purpose of repatriation to the aerial port which is within the country from which originally recruited and which is most conveniently situated to the oversea command location when military sea transportation service is not available. The direct cost of such travel is to be paid for by the individual or withheld from the money due the individual by the Government. Traffic in this category will be granted the lowest class of priority.

(3) *Category 17.* Civilian personnel or Government contractors and technical advisors to military authorities when engaged in activities of the Department of Defense in areas outside the continental United States who default in their contracts and whose tour of duty is terminated for the convenience of the Government, for the purpose of repatriation to the continental United States when Military Sea Transport Service is not available.

(4) *Category 18.* Nongovernmental passengers upon certification of the head of the interested Executive department or agency that the furnishing of such transportation is in the national interest, and that transportation by commercial means is not available or adequate.

(5) *Category 19.* Officials of the other executive departments or agencies, of the judicial branch, or of the legislative branch, and their dependents, on a nonsponsored trip when authorized by the Secretary of Defense.

(6) *Category 20.* Civilian personnel of Department of Defense agencies operating on nonappropriated funds.

(c) *Personnel, space available, nonrevenue.* The term "space available basis," means space that is surplus after all space requirement traffic has been accommodated and which would otherwise be unused.

(1) *Category 21.* Military personnel of the Department of Defense, U. S. Coast Guard, and foreign exchange officers, including British, Canadian, and Australian, on duty with the Department of Defense when traveling in connection with sick or ordinary leave.

(2) *Category 22.* Persons holding the Congressional Medal of Honor, on space available basis within the continental United States, upon presentation of proper identification. These persons will sign a certificate that the travel is not for personal gain, in accordance with Part 180 of this chapter.

NOTE: Whenever travel is performed in one direction on a permissive basis, that is military personnel on leave, military and civilian personnel under emergency leave or accompanied travel of dependents, there is no guarantee of space on any return flight and the Government will be under no obligation to return the individual to point of origin or to any other destination.

(d) *Cargo-nonrevenue.* (1) Cargo of the Department of Defense.

(2) Mail of the Department of Defense and of military personnel and personal mail of those civilians authorized to use military postal facilities.

(3) Cargo carried as a matter primarily of official concern to the Department of Defense.

(4) Cargo of the American Red Cross for use of the Department of Defense.

(5) Any cargo in case of catastrophe, the lack of which would cause loss of life, when other means of transportation are not available, feasible, or adequate.

(e) *Cargo-revenue.* (1) Cargo moving in the interest of other governmental departments or agencies, with reimbursement from the department or agency concerned.

(2) Nongovernmental cargo upon certification of the head of the interested executive department or agency that the furnishing of such transportation is in the national interest, and that transportation by commercial means is not available or adequate.

(3) Cargo of Department of Defense agencies operating on nonappropriated funds.

§ 175.7 Additional authorization.

(a) Requests for transportation of traffic not covered by this part will be referred to the Chief of Staff United States Army; Chief of Naval Operations, or the Director of Transportation, Headquarters United States Air Force, depending upon the department involved.

(b) All requests for Military Air Transport Service special missions not involving aircraft of the United States Air Force Special Air Mission Fleet will be submitted through appropriate channels to the Director of Transportation, Headquarters United States Air Force.

(c) The general policy of the Department of Defense is to prohibit travel of dependents on other than competent orders when the transportation is in connection with permanent change of station assignment of the principal. However, under extenuating circumstances in individual cases, certain exceptions may be authorized by the Secretary of Defense; Secretaries of the Departments; chairman of the Joint Chiefs of Staff; Chief of Staff, United States Army; Chief of Naval Operations; Chief of Staff, United States Air Force, and Commandant of the Marine Corps, to allow travel on a space-available basis.

§ 175.8 Revenue traffic charges.

(a) Charges will be assessed for the transportation of traffic qualifying under § 175.6(b) and (e). Rates to be charged will be determined by the Chief of Staff, United States Air Force. Such charges will be reasonable and, except as provided in paragraph (b) of this section, not less than the current commercial rates, including taxes. Responsibility for collection of such charges will rest with the Chief of Staff, United States Air Force.

(b) Reimbursement by the Government agency concerned for traffic authorized under § 175.5 will be on the basis of the cost thereof as determined by the Chief of Staff, United States Air Force, in accordance with section 601 of the Economy Act of 30 June 1932, as amended (47 Stat. 417, as amended; 31 U. S. C. 686).

§ 175.9 Air movement designator requirements.

All traffic (passengers and cargo) authorized in this part is subject to the establishment of an air movement designator in accordance with established procedures.

(a) Traffic scheduled for movement to an aerial port of embarkation for shipment to points outside the continental United States will not be forwarded to the aerial port of embarkation unless the traffic has been assigned an air movement designator and appropriately cleared.

(b) Limitation: In the establishment of air movement designators, traffic referred to in § 175.6(a) and (d) will, at all times, be accorded primary consideration. Traffic, the transportation of which is authorized under § 175.6(b) and (e), will not be carried if it can reasonably be handled by United States civil air carriers, nor will such traffic be carried on any given route if in the opinion of the Departments of the Army, Navy,

or Air Force, United States civil air carriers are adequate to handle such traffic.

§ 175.10 Special requirements.

(a) All traffic to be moved on Military Air Transport Service aircraft must meet carrier acceptability requirements with respect to packing, marking, and documentation. Appropriate records will be maintained to provide essential information concerning diversions, intransit data, and receipt and delivery of traffic.

(b) Military Air Transport Service will be responsible but not accountable for all traffic carried, with responsibility beginning at the station where traffic is accepted and ending upon delivery at the carrier destination airport.

(c) The Chief of Staff, United States Air Force or the Commander, Military Air Transport Service may effect emergency changes in the transport operations and the diversion of traffic already en route, with notice to the shipping agency as to alternate means of transportation utilized, when such becomes necessary. Any diversion of traffic at aerial ports of embarkation will be the responsibility of the appropriate air traffic coordinating officer.

§ 175.11 Baggage allowances.

(a) *Normal baggage allowance.* The normal baggage allowance for all passengers, except those covered by paragraph (c) of this section, traveling on Military Air Transport Service aircraft will be limited to 65 pounds of baggage.

(b) ***Excess baggage allowance.*** An excess baggage allowance may be granted by agencies authorized to establish air movement designators. Excess allowances, when authorized, will be included in individual's orders.

(c) ***Baggage allowance exceptions.*** (1) A baggage allowance of 100 pounds may be authorized for dependent females and dependent children (male and female) who are traveling to oversea destinations. Any authorized excess baggage will be indicated in the individual's orders.

(2) Military, naval, and air attaches and mission personnel are authorized a baggage allowance of 100 pounds while traveling to oversea destination. Any authorized excess baggage will be indicated in the individual's orders.

(3) Personnel evacuated as patients by air from an oversea area or within the continental United States are authorized 100 pounds of baggage.

(d) ***Baggage not covered by this part.*** This part limits only the baggage which may be carried by passengers on Military Air Transport Service aircraft, as provided in this section, and does not limit or increase the baggage which may be transported by other means of transportation on change of station, as prescribed by existing directives.

§ 175.12 Diversion to commercial carriers.

Diversion of cargo from Military Air Transport Service aircraft and forwarding by commercial carrier to consignee will be in accordance with existing directives.

PART 180—TRANSPORTATION BY AIRCRAFT OTHER THAN MILITARY AIR TRANSPORT SERVICE

Sec.

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AUTHORITY: §§ 180.1 to 180.13 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 180.1 Purpose and scope.

This part establishes the policy for the authorization of traffic on aircraft of the Department of Defense other than scheduled aircraft operated by the Military Air Transport Service under the provisions of Part 175 of this chapter.

§ 180.2 Definitions.

(a) *Traffic.* Cargo, mail, passengers, and passengers' baggage.

(b) ***Revenue traffic.*** Traffic for which reimbursement to, or accounting by, the Department of Defense is required.

(c) ***Nonrevenue traffic.*** Traffic transported in the primary official interest of the Department of Defense.

(d) ***Competent authority.*** An official bearing the title of commanding officer or higher authority in the chain of command of the Army, Navy, Air Force, Marine Corps, Coast Guard (when assigned to the operational control of the Navy), the Reserve components of the aforementioned organizations and the National Guard.

§ 180.3 Uniform.

Proper uniform will be worn under all normal conditions. Civilian clothes may be worn in exceptional circumstances when authorized by competent authority.

§ 180.4 Authorization.

Competent authorities listed in § 180.2 (d) may authorize traffic of the following categories transported on military aircraft without reimbursement. Any traffic transported under the provisions of this part will be properly identified.

(a) Military personnel of the United States (including midshipmen or cadets of the Army, Navy, Air Force, and Coast Guard) in active Federal Service, while in a duty status on a requirement basis, or while in a leave status on a space available basis. Orders directing permanent change of station or temporary duty travel, or authorizing leave, will constitute authority.

(b) Military personnel of the National Guard and members of the Reserve components and retired military personnel whose names appear on the published retired list of the Army, Navy, Air Force, Marine Corps, or Coast Guard: Upon presentation of orders issued by competent authority or presentation of proper identification on a space-available basis within the zone of the interior after all priority requirements have been satisfied. The certificate required by § 180.12 must be executed. Proper identification for the services is as follows:

Service	Reserve	Retired
Army	NME 2A (Reserve) Form DD2A (Reserve)	Form DD2A (Retired).
Navy	Form DD2N (Inactive).	Form DD2N (Inactive).
Marines	NavMc 178-PD	Form DD2MC.
Coast Guard	Form DD2CG (Inactive).	Form DD2CG (Retired).
Air Force	Form DD2AF (Reserve).	Form DD2AF (Retired).

(c) State National Guard officials, including State governors, Lieutenant governors, and adjutants general when the travel within the zone of interior is connected directly with the National Guard activities. Other persons as specified by the above when prior approval has been obtained from the Chief of Staff, Army; Chief of Naval Operations; or Chief of Staff, United States Air Force.

NOTE: Provisions governing passengers in National Guard aircraft will be promulgated by the Chief, National Guard Bureau.

(d) Reserve Officers' Training Corps students of the Army, Navy, and Air Force, as follows:

(1) Summer camps: Reserve Officers' Training Corps students of the Army, Navy, and Air Force at summer camps or on active training duty on authorized flights upon approval of Reserve Officers' Training Corps camp commander or upon presentation of orders from competent authority.

(2) During school year, provided that:

(i) Aircraft is on an authorized local flight.

(ii) Students are undergoing formal Reserve Officers' Training Corps and academic training during a regular school term and the flight is in connection with this training.

(iii) Students are in proper uniform.

(e) Civil Air Patrol personnel, as follows:

(1) Civil Air Patrol senior members are authorized to be carried as passengers in military aircraft when engaged in the performance of official Civil Air Patrol duties, upon presentation of orders authorized by the National Commander, Civil Air Patrol, and provided that such transportation does not interfere with normal military activities.

(2) Civil Air Patrol cadets participating in Civil Air Patrol activities when authorized by the National Commander, Civil Air Patrol. Normally, flights will be of local orientation type not involving special hazard, and will be accomplished to permit Civil Air Patrol cadets to travel as passengers on routine training flights without additional expense to the Government.

(f) Properly registered (senior) explorers of the Boy Scouts of America participating in scout activities on local orientation flights, provided that:

(1) Multiengine aircraft is used.

(2) Each explorer presents, through his local scout executive, a completed Boy Scouts of America Form O–1518, Recognition and Approval for Senior Explorers Orientation Flights, which includes a statement of parents' or guardian's consent.

(3) Prior approval is obtained from the Chief of Naval Operations for Navy aircraft.

(g) Persons holding the Congressional Medal of Honor, on space-available basis within the zone of interior upon presentation of proper identification and valid authorization card issued by either the Departments of the Army, Navy, or Air Force. (The certificate required by § 180.12 must be executed.)

(h) Red Cross personnel and personnel of other nationally recognized welfare agencies when serving with the armed services in the field, provided that they are in uniform and when such flights are in the performance of their official duties.

(i) Commissioned officers of the Public Health Service detailed for duty with the Army, Navy, Air Force, or Coast Guard, while in a duty status.

(j) Any person in case of an emergency involving catastrophe or possible loss of life, or in an emergency when other means of suitable transportation are not available, feasible, or adequate.

(k) Any person deputized to participate in fighting forest fires or engaged in disaster relief activities upon request of the responsible Federal or State agency.

(l) Any person when the travel is necessary for the preservation of peace, order, and safety of the Nation when such travel is requested by the responsible Federal or State officials.

(m) Civilian employees of the Department of Defense, of other Government agencies, of Government contractors, and technical advisers to military authorities when engaged in activities for the Department of Defense and traveling on orders issued by competent authority.

(n) Certain Canadian military personnel and civilian employees of the Canadian Defense establishment when traveling on official Canadian orders in accordance with Joint Canadian-United States Reciprocal Agreement on air transportation.

(o) British, Canadian, and Australian exchange officers on duty with the Army, Navy, or Air Force while in a duty status, upon presentation of orders issued by competent authority. These officers may be authorized space-available transportation while in a leave status, upon presentation of proper identification.

(p) Cargo and mail:

(1) Cargo and mail of the Department of Defense.

(2) Cargo of the American Red Cross for use by the Department of Defense.

(3) Any cargo in case of catastrophe, lack of which would cause loss of life when other means of transportation are not available, feasible, or adequate.

§ 180.5 Transportation of dependents.

The general policy of the Department of Defense is to prohibit travel of dependents in military aircraft unless the travel is performed in connection with permanent change of station assignment of the principal. However, under extenuating circumstances in individual cases certain exceptions may be authorized by the Secretary of Defense, Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff, Chief of Staff, United States Army; Chief of Naval Operations; Chief of Staff, United States Air Force; and the Commandant of the Marine Corps to allow accompanying travel of dependents on a space-available basis.

§ 180.6 Service attachés and mission chiefs (including MDAP and other specialized military missions).

Attachés and military mission chiefs are authorized to permit personnel of the following categories to ride as passengers in attaché or mission aircraft on a space-available nonreimbursable basis within their sphere of accreditation:

(a) Individuals listed in, and under the conditions of, § 180.4.

(b) United States ambassadors and ministers, or in their absence charge d'affaires, and members of their staffs designated by the ambassador, minister, or chargé d'affaires for the conduct of urgent Government business, except for normal permanent change of stations of such personnel.

(c) Distinguished nationals and members of the armed forces of foreign countries.

(d) Accompanying travel of dependents of attaché, mission, or military commission personnel.

(e) Use of attaché aircraft by Members of the Congress: In those instances where Congressional committees or members thereof find it necessary while abroad to request travel in Air Force or Navy aircraft allocated to the attachés or military missions, such trips may be authorized if commercial facilities are not available, if such use of the attaché or mission aircraft will not interfere in any way with the normally assigned mission of the aircraft, and provided that the purpose of the trip is specifically indicated by the chairman of the committee or subcommittee or member as being essential to the mission of the committee, subcommittee, or member. Immediately after such flights the attaché will report to the Chief of Naval Operations or the Chief of Staff, United States Air Force, as appropriate, the following information:

(1) Explanation of circumstances which made the flight desirable.

(2) Dates of departure and return.

(3) List of passengers, with justification for presence of each.

(4) Destination of passengers.

(5) Stops en route and reasons therefor.

(f) Prior approval for travel outside the sphere of accreditation for all passengers not included in § 180.4 must be obtained from the Chief of Staff, United States Army; Chief of Naval Operations; or Chief of Staff, United States Air Force.

§ 180.7 Additional authorizations.

(a) Within the limitations imposed by public law and joint regulations, the Chief of Staff, United States Army; Chief of Naval Operations; Chief of Staff, United States Air Force, or the commander of any oversea echelon reporting direct to the Departments of the Army, Navy, or Air Force may authorize the following transportation without reimbursement: Any traffic, when the transportation is primarily of official concern to the Department of Defense. While nothing contained herein is intended to infringe upon the prerogatives of theater commanders, no such transportation will be authorized unless it is of direct concern to the Department of Defense and is required for the accomplishment of a military mission.

(b) The Secretary of Defense will act on all requests for nonreimbursable transportation received from the following Federal officials: (Requests received by subordinate commands for transportation of officials or accompanying travel of dependents will be forwarded to the appropriate military department for action.)

(1) Officials of other executive departments or agencies or the judicial branch.

(2) Officials of the legislative branch, except as provided in § 180.6(e) of this chapter.

NOTE: Members of Congress who hold valid Reserve status in the Army, Navy, Air Force, Marine Corps, or Coast Guard may continue to utilize air transportation in accordance with the provisions of § 180.4.

(c) Commands listed in § 180.11 may authorize nonreimbursable travel for:

(1) Representatives of information media (that is, press, radio, news, and so forth) on assignments to cover military events. (In addition, these representatives may be furnished transportation in the event of spot news stories of transcendent National interest for which commercial or charter facilities cannot be obtained.)

(2) Inspection personnel of the Civil Aeronautics Administration when engaged in the examination of rated pilot personnel of the armed services for civil pilot certificates or ratings.

(d) Cases arising at Army, Navy, or Air Force installations not covered by this part will be referred to the Chief of Staff, United States Army; Chief of Naval Operations; or Director of Transportation, Headquarters United States Air Force, Washington 25, D. C., depending on the installation involved, with complete information for decision.

§ 180.8 Travel with reimbursement.

In cases not covered by other authority in this part, the Departments of the Army, the Navy, and the Air Force may provide air transportation with reimbursement therefor, and subject to other restrictions, in accordance with the provisions of applicable law, when the traffic is of official concern to the executive departments or agencies, or to the legislative or judicial branches of the Government. Requests for transportation in this category should be directed to the departments concerned with procurement authority chargeable or a clear indication of the method by which reimbursement is to be accomplished.

§ 180.9 Authority for certain nongovernmental transportation.

To facilitate Department of Defense operations at home and abroad, non-Governmental passengers and cargo not within the scope of the foregoing provisions may be furnished air transportation by the Departments of the Army, the Navy, or the Air Force to or from places outside the continental United States, with reimbursement therefor, at not less than current commercial rates (including taxes) on certification by the head of the interested executive department or agency that the furnishing of such transportation is in the National interest. In cases covered in this section it will be within the purview of the Secretary of the Army, the Navy, or the Air Force to refuse to authorize the transportation, if considered advisable.

§ 180.10 General policy on nongovernmental transportation.

As a general policy, the aviation organizations of the armed forces shall not be placed in a position of competing with United States commercial transportation. Therefore, in no case will air transportation under the provisions of §§ 180.8 and 180.9 be provided on any given route, if, in the opinion of the Departments of the Army, Navy, or Air Force, United States civil air carriers adequate to handle the traffic are in operation on the route.

§ 180.11 Delegation of authority.

The following commands may authorize nonreimbursable travel for the individuals listed in § 180.7(c):

Department of the Army: Chief of Staff, United States Army; Commanding Generals, Oversea Commands; Commanding Generals, Continental Armies and Military District of Washington; Chief, Army Field Forces.

Department of the Navy: Chief of Naval Operations; Commanders-in-Chief of Fleets; Commandant, U. S. Marine Corps; Commanding Generals, Fleet Marine Forces; Commanding Generals, Air Fleet Marine Forces; Commander, Air Force, Atlantic Fleet; Commander, Air Force, Pacific Fleet; Chief of Naval Air Training; Commanders, Sea Frontiers; Commandants, Naval Districts and River Commands; Commandant, Coast Guard (when assigned Navy for operational control); Naval Force Commanders.

Department of the Air Force: Chief of Staff, United States Air Force; Commanders, Major Air Commands, Zone of Interior and Overseas; Commander Civil Air Patrol, USAF; Commanders, Numbered Air Forces and their equivalents.

Delegation of this authority below the commands listed above is not authorized.

§ 180.12 Certification.

In all cases when transportation is authorized in accordance with § 180.4 (b), (g), and (h), the following certificate will be accomplished for each individual.

I, _____, hereby certify that my request for, and acceptance of, transportation via military aircraft is not for personal gain nor will the business conducted in connection with this trip result in any form of remuneration to the undersigned.

_____

_____

Witnessed:

_____

_____

§ 180.13 Release from claim for injury or death.

Personnel specified in §§ 180.4 (j), (k), (l), 180.6(c) and 180.7(c)(1) will be required to sign the release form specified below, unless otherwise exempt when physically or mentally unable or in an emergency under the provisions of this part.

RELEASE

_____

(Place)

_____

(Date)

Know All Men By These Presents: Whereby, I _____ am about to take a flight or flights as a passenger in certain Army, Navy, and/or Air Force aircraft on _____; and whereas I am doing so entirely upon my own initiative, risk, and responsibility; now, therefore, in consideration of the permission extended to me by the United States, through its officers and agents to take said flight or flights, I do hereby, for myself, my heirs, executors, and administrators, remiss, release and forever discharge the Government of the United States and all its officers, agents, and employees, acting officially or otherwise, from any and all claims, demands, actions, or causes of action, on account of my death or on account of any injury to me or my property which may occur from any cause during said flight or flights or continuances thereof, as well as all ground and flight operations incident thereto.

_____

(Signature)

_____

(Witness)

_____

(Witness)

_____

(Name of person to be notified in emergency)

_____

(Address of person to be notified in emergency)

PART 184—MOVEMENT OF PERSONNEL VIA COMMERCIAL CONTRACT AND CHARTER AIR TRANSPORTATION

Sec.
184.1 Authority and scope.
184.2 Background.
184.3 Policy.

AUTHORITY: §§ 184.1 to 184.3 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 184.1 Authority and scope.

This part prescribes policies for the movement of personnel for the Department of Defense via commercial contract and charter air transportation within the continental United States and to, from and outside the continental United States.

§ 184.2 Background.

Regulations of civil air regulatory agencies govern such matters as the safety of air transportation, airworthiness of aircraft, proficiency of flight and maintenance crews, minimum performance limitations, minimum operating limitations, maximum weight limitations, and requirements for first aid and emergency equipment.

§ 184.3 Policy.

(a) The military departments will not knowingly take any action which will contribute to or result in a carrier violation of any requirement of civil air regulatory agencies.

(b) Pressurized aircraft:

(1) Except as provided in this section, all passenger or convertible aircraft used in service between points in the United States and overseas areas will be pressurized. This requirement may be waived by the procuring agency for certain traffic over specific routes when required by exigencies of the mission.

(2) All other factors being equal, preference will be given to the use of pressurized aircraft when tendered by the carriers for travel between points within the continental United States.

(c) Uniform minimum standards of service for the movement of personnel for the Department of Defense via commercial contract and charter air transportation shall be developed by the Single Manager for Traffic Management and the Single Manager for Airlift Service (in coordination with the military departments) in implementation of this part, as they apply within the continental United States and to, from, and outside the continental United States, respectively. Such standards will provide for comfort of travel and service which will be comparable to that available to and used by the general public. The standards established may be changed or waived by the procuring agency only when such action is required to meet exigencies of the mission.

PART 190—TRANSPORTATION OF HOUSEHOLD GOODS OF MILITARY AND CIVILIAN PERSONNEL

Sec.
190.1 Purpose, applicability and objective.
190.2 Definitions.
190.3 Policies.
190.4 Implementation.
190.5 Required action.

AUTHORITY: §§ 190.1 to 190.5 issued under sec. 202, 61 Stat. 500; 5 U.S.C. 171a.

§ 190.1 Purpose, applicability and objective.

(a) This part assigns authority and responsibilities and establishes policies relative to the transportation of household goods of military and civilian personnel of the Department of Defense (1) between points within the United States and (2) between the United States and other areas in through bill of lading service when the transportation is procured and arranged by an agency of the Department of Defense.

(b) The objective of this part is to assure high quality service to military and civilian personnel of the Department of Defense in the transportation of their household goods at the lowest over-all cost to the Government.

§ 190.2 Definitions.

As used herein:

(a) "Lowest over-all cost" means the aggregate of all costs which are known or can reasonably be estimated in connection with a shipment (including accessorial charges and amounts paid by the Government for loss and damage).

(b) "United States" means the forty-eight contiguous states and the District of Columbia.

§ 190.3 Policies.

(a) *Comparative costs among modes of transportation.* Section 303(c) of the Career Compensation Act of 1949, as amended (63 Stat. 802), provides in part that "* * * members of the uniformed services * * * in connection with a change of station (whether temporary or permanent) [shall be entitled] to transportation (including packing, crating, drayage, temporary storage and unpacking) of baggage and household effects, or reimbursement therefor * * * without regard to the comparative costs of the various modes of transportation." However, comparative costs of the various modes of transportation may be disregarded only when all carriers within the mode(s) which would produce the lowest over-all cost to the Government cannot provide the required services satisfactorily. In such instances the next lowest cost mode in which carriers can provide satisfactory service shall be used. The same principle shall apply in shipping household goods of civilian personnel when the transportation is procured and arranged by an agency of the Department of Defense.

(b) *Quality of service.* The quality of service provided by carriers shall be evaluated, in comparison with uniform standards prescribed by the Single Manager for Traffic Management, on the basis of all available information, including, but not limited to, the following:

(1) Reports of inspections of carrier facilities, transportation equipment, and service practices.

(2) Carrier performance reports by military and civilian personnel in connection with the transportation of their household goods.

(3) Official reports and actions by regulatory bodies which serve as factual indicators of carrier performance.

(4) Claims for loss and damage filed against carriers and the Government, and settlements thereof.

(c) *Qualified carriers.* Only those carriers shall be qualified which:

(1) Are authorized according to law to provide the required services;

(2) Provide adequate evidence of satisfactory transportation equipment and financial responsibility and reliability;

(3) Have made specific arrangements for the use of a satisfactory terminal facility consisting of a warehouse, loading and unloading area, and office sufficiently near the shipping activity or point of origin of the shipment to assure satisfactory service and permit ready inspection of the facility and the household goods stored or serviced therein;

(4) When required, have executed and filed with the appropriate office a household goods service tender or other document authorized in lieu thereof;

(5) Assume full responsibility for arranging for placing in a satisfactory terminal facility those shipments which

require storage in transit at destination; and

(6) Provide high quality service.

(d) *Selection of carrier and distribution of traffic.* (1) Only those carriers shall be used which satisfy the requirements of paragraph (c) of this section at the lowest over-all cost to the Government. Connecting carriers on a joint carriage arrangement must meet all of the requirements for a qualified carrier except paragraph (c) (3) and (5) of this section when they are not terminating carriers.

(2) To the extent practicable, traffic shall be distributed by destination state or other area outside the United States among these carriers in equitable proportions, subject to the following:

(i) Carrier's ability to respond to requirements of the traffic offered for movement. When a carrier is offered a shipment and cannot perform, the carrier shall be charged with the offer in the same manner as if it had performed.

(ii) At each shipping activity, additional shipments shall be offered to a carrier or carriers when it has been determined that it or they provide an exceptionally high quality of service as compared with other carriers serving the activity. Such shipments shall not be charged to normal distribution.

(3) For traffic distribution purposes, carriers under effective common financial or administrative control shall be treated as a single carrier. The service tender, or document in lieu thereof, filed by each carrier shall include: (i) Name(s) of any other carrier(s) serving the same shipping activity which are under effective common financial or administrative control with the filing carrier, or (ii) a statement that the filing carrier is independent in finance and administration from all other carriers serving the same shipping activity.

(4) When consistent with other provisions of this paragraph (d):

(i) A request by the property owner for non-use of a carrier because of specific prior unsatisfactory service shall be honored if another carrier is available to move the shipment at the same over-all cost to the Government.

(ii) A preference for a carrier expressed by the property owner shall be honored.

(5) Traffic shall be distributed according to the originating carrier rather than according to agent. When a joint carriage arrangement is utilized, shipments transported thereunder shall be considered as having been received by each participating carrier qualified to serve the origin point.

(6) Records of traffic distribution shall be maintained by destination state or other area outside the United States.

(e) *Non-use of carriers.* (1) Carriers which have indicated in writing a desire to participate in Department of Defense traffic and are not considered to be qualified shall be notified in writing of their deficiencies. Such carriers shall be provided an opportunity to (i) appeal the decision, or to (ii) receive further consideration after correcting the deficiencies causing the refusal.

(2) Carriers which have been qualified, but which subsequently fail to provide high quality service, fail to meet the other requirements of paragraph (c) of this section, or commit unethical acts, shall be suspended in accordance with criteria and procedures established by the Single Manager for Traffic Management. Such carriers shall be provided an opportunity to (i) appeal the decision, or (ii) request requalification after correcting the deficiencies causing the suspension.

(f) *Use of storage in transit.* When commercial temporary storage is required in connection with transportation, storage-in-transit, as defined in carriers' tariffs, shall be used except when it is clearly evident, after considering such factors as over-all cost, and liability of the carrier versus that of the warehouseman, that the best interests of the Government and the property owner can be served only by the use of contract storage.

(g) *Use of United States carriers.* (1) The contracting carrier shall be a United States organization owned and controlled by citizens of the United States except when the Single Manager for Traffic Management has determined that a United States carrier cannot provide timely movement.

(2) When commercial ocean or air carriers or operators are to be used as a part of through bill of lading service between the United States and other areas, only ships of United States registry engaged in regular berth service or United States flag aircraft shall be used except when the Single Manager for Ocean Transportation or the Single Manager for Airlift Service, respectively, has determined they are not available for timely movement.

§ 190.4 Implementation.

(a) The Single Manager for Traffic Management is assigned authority and responsibility for:

(1) Implementing this part by prescribing, in agreement with the heads of the other military services, uniform joint regulations which will include but not be limited to: (i) Service tenders or other documents authorized in lieu thereof; (ii) standards for quality of service; (iii) procedures for measuring and comparing the quality of service provided by carriers; (iv) criteria and procedures for offering additional shipments and for qualifying, selecting, and suspending carriers; and (v) standards, formulae, and procedures for determining the lowest over-all cost.

(2) Assuring compliance with the above-mentioned regulations. Compliance will be accomplished through command channels of the military services, by appropriate means, including action based on recommendations by representatives of the Military Traffic Management Agency resulting from staff visits to all activities of the military services within the United States which ship household goods.

(3) Negotiating with commercial carriers and operators on all matters incident to the transportation of household goods within the United States and between the United States and other areas in through bill of lading service. Negotiations with commercial air or ocean operators for transportation as a part of through bill of lading service between the United States and other areas, or with air carriers for service within the United States under long term contracts, shall be conducted by the Single Manager for Airlift Service or the Single Manager for Ocean Transportation. The agreement of the Single Manager for Traffic Management shall be secured prior to the initiation of such negotiations.

(b) The service tenders or other documents authorized in lieu thereof referred to in paragraph (a) (1) of this section shall require carriers providing through bill of lading service between the United States and other areas to furnish after the fact reports of shipments to the Single Manager for Traffic Management, the Single Manager for Ocean Transportation, and the Single Manager for Airlift Service, as prescribed by uniform joint regulations.

(c) The Single Manager for Traffic Management shall consult with the Small Business Administration and appropriate representatives of the transportation industry on those portions of joint procedures, standards, criteria and regulations directly affecting the transportation industry prior to their publication.

(d) The Single Manager for Traffic Management shall develop, with the joint participation of the heads of the other military services, all standards, programs and procedures relative to the transportation of household goods. He shall also keep the Single Manager for Ocean Transportation and the Single Manager for Airlift Service informed on plans and other matters involving through bill of lading service between the United States and other areas.

(e) The implementation of this part shall not abrogate the functions and responsibilities of the Single Manager for Airlift Service or the Single Manager for Ocean Transportation, nor, in overseas areas, of the military services or the unified or specified commands.

§ 190.5 Required action.

(a) Joint regulations implementing this part shall be issued and action taken to assure uniformity of application in accordance with the schedule in paragraph (c) of this section. Such regulations, amendments thereto, and reissues thereof shall be coordinated with the Assistant Secretary of Defense (Supply and Logistics) prior to publication, and two copies of such documents shall be forwarded to him within thirty days after publication.

(b) Provisions of all regulations of the Military Departments implementing Parts 206 and 208, 32 CFR 1960 Cum. Supp., shall remain in effect until super-

seded by the joint regulations implementing this part.

(c) The schedule for implementation of this part is:

(1) September 1, 1960—Completion of printing and distribution of Implementing Regulations.

(2) September 7–December 1, 1960—Conduct conferences with Transportation Officers throughout the United States and overseas areas. Carriers will be invited to similar conferences.

(3) December 1, 1960—Effective date of Implementing Regulations.

PART 200—OCEAN TRANSPORTATION SERVICE

200.1 Authority and responsibility.
200.2 Background.
200.3 Organization.
200.4 Relationships.
200.5 Fiscal.

AUTHORITY: §§ 200.1 to 200.5 issued under R. S. 161, sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 22, 171a. Interpret or apply secs. 2201, 2202, 70A Stat. 119, 120; 10 U. S. C. 2201, 2202.

§ 200.1 Authority and responsibility.

(a) The Secretary of Defense has designated the Secretary of the Navy as the "Single Manager for Ocean Transportation" with authorities and responsibilities as assigned in Department of Defense notice of May 28, 1956 (21 F. R. 4022).

(b) The Single Manager Operating Agency for Ocean Transportation is titled the "Military Sea Transportation Service (MSTS)."

(c) The Single Manager has designated the Commander Military Sea Transportation Service as the Executive Director for Ocean Transportation.

(d) As a part of the Operating Forces of the Navy, the Military Sea Transportation Service is responsible, through the Commander Military Sea Transportation Service, to the Chief of Naval Operations. As a procuring activity, the Military Sea Transportation Service is responsible, through its Commander, to the Assistant Secretary of the Navy (Material).

(e) The Executive Director for Ocean Transportation is assigned the responsibility for the control, operation and administration of ocean transportation (by government-owned or commercial vessels) for personnel, cargo and mail for all agencies of the Department of Defense (excluding personnel and cargo transported by units of the fleet) and as authorized or directed, for other agencies or departments of the United States, subject to the policies of the Secretary of Defense.

§ 200.2 Background.

The Military Sea Transportation Service was originally established by directive of the Secretary of Defense dated August 2, 1949 (14 F.R. 5203). Pursuant to this directive, terms of reference, preliminary agreements and procedures were determined by designated representatives of the Chief of Staff, U.S. Army, the Chief of Naval Operations and the Chief of Staff, U.S. Air Force. These were promulgated by the Deputy Chief of Naval Operations (Logistics) under Serial 1825P421 of September 2, 1949 and concerned those matters incident to the formation of MSTS, including the transfer of ships, the assignment of personnel and pertinent details of support and operational procedures. All of the actions required by these terms of reference have been accomplished.

§ 200.3 Organization.

(a) The organization of the Military Sea Transportation Service is patterned to provide prompt and efficient means for the ocean transportation requirements of the military services and to afford sufficient flexibility to permit ready transition from peacetime to war or other emergency operations.

(b) Under the Commander Military Sea Transportation Service with headquarters at Washington, D. C., Area Commands, headed by Flag Officers, have been established as follows:

Eastern Atlantic and Mediterranean Area (ELMAREA), London.
Atlantic Area (LANTAREA), New York.
Pacific Area (PACAREA), San Francisco.
Western Pacific Area (WESTPACAREA), Yokosuka.

Sub-area Commands and Port Offices have been established at locations within Area Commands. Such Port Offices are subject to inactivation or relocation as circumstances warrant to meet the sea transportation needs of military personnel and cargo.

§ 200.4 Relationships.

(a) *Seller/customer relationship.* The Military Sea Transportation Service maintains a seller/customer relationship with the Army, Air Force, Navy and Marine Corps as shippers, charging for services rendered on the basis of predetermined tariffs approved by the Assistant Secretary of Defense (Comptroller).

(b) *Departmental headquarters.* The following departmental headquarters' offices are the points of contact with the Military Sea Transportation Service for the ocean transportation requirements of their respective departments:

(1) Department of the Army, Office of the Chief of Transportation.

(2) Department of the Air Force, Office of the Director of Transportation.

(3) Department of the Navy:
(i) Navy (Cargo) Bureau of Supplies and Accounts, (Personnel) Bureau of Naval Personnel.
(ii) Marine Corps (Cargo) Bureau of Supplies and Accounts, (Personnel) Bureau of Naval Personnel.

(c) *Space Assignment Committees.* Space Assignment Committees (or Joint Military Transportation Boards) have been established at headquarters and at each of the Area and Sub-area Commands. These Committees, for both cargo and passenger space allocations, are composed of representatives of each of the shipper services and are chairmanned by a representative of MSTS.

(d) *Joint policies.* Policies governing the transportation of cargo and passengers by the Military Sea Transportation Service have been jointly determined by the Departments of the Army, Navy and Air Force and promulgated by the Chief of Naval Operations.

(e) *Reporting shipping requirements and capabilities.* Procedures for reporting shipping requirements and capabilities and for the utilization of MSTS controlled shipping, berth space availability and reefer (i. e., refrigerated) shipping space have been agreed upon between the Commander, Military Sea Transportation Service and the Chief of Transportation, U. S. Army, on behalf of the Departments of the Army and Air Force. A similar agreement has been concluded with the Chief, Bureau of Supplies and Accounts on behalf of the Department of the Navy.

(f) *Accessorial and miscellaneous services.* The responsibilities of the Military Sea Transportation Service, the shipper services, and vessel operators for the performance of accessorial and other miscellaneous services, for the costs of such services, and for payment for such services have been determined in joint conferences and promulgated by the Secretary of the Navy in conjunction with the Departments of the Army and Air Force.

(g) *Unutilized traffic reservations (dry cargo.)* Agreement on the procedure for determining unutilized traffic reservations (dry cargo) on MSTS controlled ships has been reached between the Military Sea Transportation Service and the Departments of the Army, Navy and Air Force.

(h) *Ship and/or terminal demurrage (dry cargo).* Agreement on procedures for determining ship and/or terminal demurrage (dry cargo) under the MSTS Billing Regulations has been reached between the Military Sea Transportation Service and the Departments of the Army, Navy and Air Force.

(i) *Tanker/terminal demurrage.* Agreement on tanker/terminal demurrage procedure has been reached between the Military Sea Transportation Service and the Departments of the Army, Navy and Air Force.

(j) *Coastwise and intercoastal lift capacity.* Procedures have been developed by the Military Sea Transportation Service to keep the Executive Director of the Military Traffic Management Agency (see 21 F. R. 4355) informed as to the availability of opportune MSTS-operated coastwise and intercoastal lift capacity.

(k) *Technical and material matters concerning ships assigned to MSTS.* The responsibilities of the Commander Military Sea Transportation Service and the Chief, Bureau of Ships, Department of the Navy, for technical and material matters concerning ships assigned or to be assigned to the Military Sea Transportation Service have been promulgated by the Chief of Naval Operations.

(l) *Inspection and certification of ships by U. S. Coast Guard.* An agreement with the U. S. Coast Guard for the periodic inspection and certification of MSTS vessels of commercial types in accordance with the Coast Guard's Merchant Marine Safety Manual, has been promulgated by COMSTS (Commander Military Sea Transportation Service).

(m) In accordance with the policies of the Department of Defense for implementation of Single Manager Assignments, the Secretary of the Navy provides for direct coordination with the other Military Services and the Office of the Secretary of Defense on matters connected with the operation of the Ocean Transportation Service.

§ 200.5 Fiscal.

(a) The operations of the Military Sea Transportation Service are financed under the Navy Industrial Fund (Charter for Operation issued by the Assistant Secretary of Defense (Comptroller).

(b) The Military Sea Transportation Service follows a double-entry commercial type accounting system, maintained on an accrual basis and observes fiscal procedures in accordance with the directives of the Assistant Secretary of Defense (Comptroller) and the Comptroller of the Navy.

(c) Bills are submitted monthly by the Military Sea Transportation Service to each agency to whom services are rendered. Charges are computed on the basis of predetermined tariff rates and other factors calculated to recover the over-all cost of operations.

(d) To keep the customer services apprised of the results of its operations, the Military Sea Transportation Service prepares and distributes quarterly statistical and financial reports. These reports are reviewed and fully discussed with the MSTS staff by representatives of the shipper services at meetings held in conjunction with the monthly meetings of the Administrative Committee (see 21 F. R. 4023) scheduled in pursuance of paragraph III. C. 1 of Department of Defense Directive 5160.12 of January 31, 1956 (Policies for Implementation of Single Manager Assignments).

PART 210—REIMBURSABLE AND NONREIMBURSABLE TRAVEL

Sec.
210.1 Travel without reimbursement.
210.2 Travel with reimbursement.
210.3 Authority for certain nongovernmental travel.
210.4 General policy on nongovernmental travel.

AUTHORITY: §§ 210.1 to 210.4 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 210.1 Travel without reimbursement.

(a) *Sponsored travel.* Sponsored travel is defined as and confined to military air transportation furnished by a military department to its own officials or to Members of Congress and other Government officials or other persons to whom an invitation to travel has been extended by the Office of the Secretary of Defense or by one of the military departments. The military departments (Army, Navy and Air Force) are granted the authority to extend such invitations unilaterally to congressional committees and staff members, individual Members of Congress, and other Government officials, when the purpose of the travel is of primary concern to the military department extending the invitation.

(1) *Officials of the Department of Defense, Military Departments, etc.* Travel without reimbursement by officials and by military and civilian personnel of the Department of Defense, the three military departments and the boards and other agencies of the Department of Defense shall be governed by such regulations as the Secretary of Defense may from time to time prescribe.

(b) *Nonsponsored travel.* Nonsponsored travel is defined as and confined to military air transportation furnished pursuant to an official request upon the Secretary of Defense or to a military department from a department, agency or official of the Government outside of the Department of Defense.

(1) *Officials of other Executive Departments or agencies or Judicial Branch.* Requests for travel without reimbursement by Government officials of the other Executive Departments or agencies or Judicial Branch, whose travel is of primary interest to the Department of Defense, will be screened and approved in writing by the head of the agency to which the official is attached and the approved request then forwarded to the Secretary of Defense for disposition.

(2) *Officials of the Legislative Branch.* (i) Requests for travel without reimbursement by members of Congress and committee staff members, whose travel is of primary interest to the Department of Defense, should be submitted in writing to the Secretary of Defense by the Chairman of the Congressional committee upon which the member of Congress is serving. The committee chairman should state in his request whether or not he believes the travel to be of primary interest to the Department of Defense.

(ii) Members of Congress who hold valid reserve status in the Army, Navy, Air Force or Marine Corps may continue to utilize air transportation in accordance with existing policies of the respective military departments (Army, Navy and Air Force) applicable to the reserve officer and enlisted personnel of those departments.

(3) *Nonofficial passengers (sponsored and/or nonreimbursable trips).* Exceptions to the general policy of prohibiting accompanying travel of dependents on Department of Defense sponsored nonreimbursable trips are as follows:

(i) To permit travel of dependents of attaché mission or military commission personnel as may be designated by the respective Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, the Chiefs of Staff of the Army and Air Force, the Chief of Naval Operations and the Commandant of the Marine Corps in overseas areas on attaché or mission aircraft.

(ii) To permit travel of dependents of other military or civilian personnel of the Department of Defense when authorized by the Secretary of Defense, or by the respective Secretaries of the Military Departments, the Chiefs of Staff of the Army and Air Force, the Chief of Naval Operations or the Commandant of the Marine Corps, as being in the national interest, essential to the proper accomplishment of the mission, desirable because of diplomatic or public relations, or as necessary for the health or morale of the principals concerned.

(iii) To permit the accompanying travel without reimbursement of dependents of officials of the other Executive Departments or agencies, of the Judicial Branch, or of the Legislative Branch, when accompanying their principals on a sponsored trip, and when authorized in each instance by the Secretary of Defense as being in the national interest, essential to the proper accomplishment of the mission, desirable because of diplomatic or public relations, or as necessary for the health and morale of the individuals concerned.

Requests for the accompanying travel without reimbursement on military aircraft by dependents of officials of the other Executive Departments or agencies, of the Judicial Branch, or of the Legislative Branch should be referred to the Secretary of Defense.

(4) *Nonofficial passengers (nonsponsored and/or reimbursable trips).* The rule generally prohibiting passage of dependents on Department of Defense sponsored nonreimbursable trips is also applicable to nonsponsored and/or reimbursable trips. However, exceptions to the rule may be authorized under certain circumstances. Current exceptions to the rule would be: To permit accompanying travel on nonsponsored and/or reimbursable trips of dependents of officials of other Executive Departments or agencies, of the Judicial Branch, or of the Legislative Branch when accompanying their principals and when authorized in each instance by the Secretary of Defense as being essential to the proper accomplishment of the mission, desirable because of diplomatic or public relations, or as necessary for the health or morale of the individuals concerned.

(5) *Use of attaché aircraft by Members of the Congress.* (i) In those instances where Congressional committees or members thereof find it necessary while abroad to request travel in Air Force or Navy aircraft allocated to the attachés or military missions, such trips may be authorized if commercial facilities are not available, if such use of the attaché or mission aircraft will not interfere in any way with its normally assigned mission, if the purpose of the trip is specifically indicated by the chairman of the committee or subcommittee or member as essential to the mission of the committee, subcommittee or member.

(ii) A report of each trip so flown will be made to the appropriate military department by the attaché concerned, which report will indicate the names and numbers of passengers carried, the duration, destinations and purpose of the trip.

§ 210.2 Travel with reimbursement.

In cases not covered by the preceding section, the Department of the Navy and the Department of the Air Force may provide air transportation with reimbursement therefor, and subject to other restrictions thereon, in accordance with the provisions of applicable law, when the traffic is of official concern to the Executive Departments or agencies, or to the Legislative or Judicial Branches of the Government. Requests for transportation in this category should be directed to the Secretary of the Air Force with procurement authority chargeable or a clear indication of the method by which reimbursement is to be accomplished.

§ 210.3 Authority for certain nongovernmental travel.

In order to facilitate Department of Defense operations at home and abroad, nongovernmental passengers and cargo not within the scope of the foregoing provisions may be furnished air transportation by the Department of the Navy or the Department of the Air Force to or from places outside of the Continental United States, with reimbursement therefor, at not less than current commercial rates (including taxes) upon certification by the head of the interested Executive Department or agency that the furnishing of such transportation is in the national interest. In cases covered in this paragraph it will be within the purview of the Secretary of the Navy or the Secretary of the Air Force to refuse to authorize the transportation if deemed advisable.

§ 210.4 General policy on nongovernmental travel.

As a general policy, the aviation organizations of the Armed Forces shall not be placed in a position of competing with United States commercial transportation. Therefore, in no case will air transportation under the provisions of the two paragraphs immediately above be provided on any given route if, in the opinion of the Departments of the Army, Navy or Air Force, United States civil air carriers adequate to handle the traffic are in operation on the route.

SUBCHAPTERS G THROUGH L—[RESERVED]

SUBCHAPTER M—MISCELLANEOUS

PART 251—PROCUREMENT INSPECTION STAMPING

§ 251.1 Procurement inspection stamping.

(a) Materiel which is government inspected at origin or place of manufacture shall be stamped with the appropriate DOD procurement inspection approval stamp. Such stamping will indicate to government personnel that the materiel has been government inspected and approved for further processing, shipping or subsequent acceptance

(b) The stamping of each individual item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, shipping documents or lot routing tickets adequately serves to provide the necessary indication of inspection status and to control or facilitate the movement of materiel.

(c) The only two authorized forms of DOD procurement inspection approval stamping are:

(1) Stamping to indicate complete compliance with inspection requirements (The square stamp)

(2) Stamping to indicate partial compliance with inspection requirements. (The circle stamp)

(d) When a DOD procurement inspection approval stamp is affixed to any materiel, it shall not be construed to mean that the materiel has or has not been accepted by the government.[1]

(e) The use of the DOD Procurement Inspection Approval Stamps will be governed by the following procedures:

(1) *Complete (Square) Inspection Approval Stamp.* This stamp shall be used by or at the direction of the government inspector to identify prime or sub-contract materiel which has successfully passed complete inspection. Complete inspection approval stamping shall identify for government personnel materiel which is in complete conformance with all inspection requirements applicable to the materiel at the time and place of inspection. Complete inspection approval stamping involving any items, parts or components identified previously for partial inspection approval shall establish that the materiel which was once partially approved has subsequently received complete inspection approval. One imprint of the square stamp will serve to void multiple partial approvals.

(2) *Partial (Circle) Inspection Approval Stamp.* This stamp shall be used by or at the direction of the government inspector to identify prime or sub-contract materiel which has successfully met only some portion of the inspection requirements applicable to the materiel at the time and place of inspection. Partial inspection approval stamping shall identify for government personnel materiel which complies with all inspection requirements applicable at the time and place of inspection, excepting those listed as uninspected on the Materiel Inspection Receiving Report (DD Form 250 series), packing list or comparable document.

(f) The designs of the DOD Procurement Inspection Approval Stamps are shown in this section. Unauthorized use of these stamps is prohibited.

(Sec. 202, 61 Stat. 500, as amended; 5 U.S.C. 171a)

[1] When materiel has been determined to be in conformance with the contract requirements, acceptance on behalf of the government shall ordinarily be accomplished by the execution, and delivery to the contractor, of the acceptance certificate on the applicable inspection and receiving report form, i. e. DD Form 250, DD Form 1155, or Standard Form 44. Refer to Armed Services Procurement Regulation, Section XIV, Part II, Acceptance, for full details regarding government acceptance.

PART 253—PROCUREMENT INSPECTION POLICIES AND PROCEDURES FOR ITEMS COVERED BY MILITARY AND FEDERAL SPECIFICATIONS

Sec.

253.1 Purpose.
253.2 Definitions.
253.3 Policies.
253.4 Situations warranting the execution of particular examinations and tests by the Government.
253.5 Factors influencing extent of Government inspection.
253.6 Standard procedures for Government verification inspection.
253.7 Implementation.
253.8 Review and evaluation of the supplier's inspection procedures.
253.9 Inspection and calibration of the supplier's gages, measuring and test equipment.
253.10 Examination of the supplier's inspection records.
253.11 Performance of product verification inspection by the Government.

AUTHORITY: §§ 253.1 to 253.11 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 253.1 Purpose.

In furtherance of the quality assurance concept and policy specified in Department of Defense Instruction 4155.6, "Department of Defense Quality Assurance Concept and Policy," this part establishes uniform Department of Defense policies and procedures for procurement inspection for items covered by military and Federal specifications.

§ 253.2 Definitions.

Terms used in this part are defined in MIL–STD–109, "Inspection Terms and Definitions."

§ 253.3 Policies.

(a) *Supplier responsibilities for inspection.* (1) Except as provided in subparagraph (2), of this paragraph, the supplier shall be required to perform the examinations and tests set forth in the specifications to substantiate conformance of supplies to specification requirements.

(2) Certain inspection requirements may be executed by the Government when it is not advisable to specify that the particular examinations and tests be performed by the supplier. In such cases, these examinations and tests to be performed by the Government shall be explicitly identified in the specification or contract. (Section 253.4 identifies some of the specific situations for which it is advisable that examinations and tests be performed by the Government.)

(3) Suppliers shall either (i) have available adequate test facilities for executing specific prescribed tests, or (ii) make arrangements for the utilization of suitable test facilities.

(4) Records of examinations and tests performed by the supplier shall be maintained by the supplier and made available for use by the Government for the duration of time specified in the contract.

(5) The supplier shall be responsible for compliance with all requirements of the specification and all other technical requirements of the contract.

(b) *Government responsibilities for inspection.* (1) The Government inspector shall make optimum use of the inspection records of examinations and tests performed by or for the supplier in accordance with the quality assurance provisions of commodity specifications, and other pertinent inspection records, in determining acceptability of supplies.

(2) Procurement inspection by the Government to verify the supplier's compliance with specification requirements and other technical requirements of the contract, shall be so planned as to promote adequate assurance of quality by the most efficient utilization of the inspection resources of the military departments. (Section 253.5 identifies specific factors influencing the extent of Government inspection.)

(3) Where the specification or contract requires the supplier to conduct particularly expensive tests involving destruction of supplies, extended periods of time for conducting the tests or other factors contributing to high testing costs, etc., these tests shall be coordinated for simultaneous supplier and Government accomplishment to the maximum extent practicable to preclude the need for subsequent independent Government verification testing.

(4) Government inspection to determine compliance with any requirements of the specification not covered under the quality assurance provisions and other technical requirements of the contract shall be conducted to the extent deemed necessary by the military inspecting activity having cognizance at the supplier's plant.

§ 253.4 Situations warranting the execution of particular examinations and tests by the Government.

While the execution of inspection requirements prior to submission of supplies to the Government normally will be the responsibility of the supplier (see paragraph (a)(1) § 253.3), under certain conditions, it is advisable to state in the specification or contract the particular examinations and tests to be performed by the Government. The following are specific situations for which it may be desirable to designate explicitly in the specification or contract, examination and testing solely by the Government:

(a) Test requirements which necessitate the use of specialized test equipment or facilities not ordinarily available in suppliers' plants or commercial laboratories, e. g. ballistic testing of ammunition, environmental tests, simulated service tests;

(b) Inspection to determine qualification of a supplier's product for inclusion on a Qualified Products List;

(c) Pre-production, pilot-lot or pilot model examination and testing, either at a Government installation or at the supplier's plant.

§ 253.5 Factors influencing extent of Government inspection.

The extent of Government inspection to verify the supplier's compliance with the quality assurance provisions of the commodity specification and with other technical requirements of the contract shall be adjusted to reflect the following factors:

(a) The possible effect of failure of the item on the safety of personnel;

(b) The tactical or strategic importance of the item;

(c) The complexity of the item and the need for high reliability of the item and its components;

(d) The pertinency, completeness and reliability of the supplier's inspection records;

(e) The previous quality history of the supplier's product;

(f) The quantity and technical specialties of available Government inspection manpower;

(g) Technical importance of the item; and

(h) The unit cost of the item.

§ 253.6 Standard procedures for Government verification inspection.

To promote uniformity in Government verification inspection of suppliers' compliance with the quality assurance provisions of specifications and other technical requirements of the contract, the following aspects of verification inspection shall be treated in accordance with the standard procedures contained in §§ 253.8, 253.9, 253.10 and 253.11:

(a) Review and evaluation of the supplier's inspection procedures;

(b) Inspection and calibration of the supplier's gages, measuring and test equipment;

(c) Examination of the supplier's inspection records; and

(d) Performance of product verification inspection by the Government.

§ 253.7 Implementation.

Within ninety (90) days after date of this part, each of the military departments shall submit two copies of the proposed implementing instructions to the Assistant Secretary of Defense (Supply and Logistics) for approval. The policies specified under § 253.3(a), relating to supplier responsibilities for inspection shall be implemented as follows:

(a) *New, revised and amended specifications.* For new specifications and those requiring revision or amendment for other reasons, a statement of supplier responsibilities shall be included in section 4 of the specification.

(b) *Existing specifications in military and Federal series.* When new procurement is initiated for items covered by existing specifications that do not contain a statement of supplier responsibilities, such a statement shall be included in invitations for bids and in subsequent contracts.

After the proposed implementing instructions are approved, the military departments will be advised by memorandum of the date for publication of the approved instructions.

§ 253.8 Review and evaluation of the supplier's inspection procedures.

In reviewing and evaluating the supplier's inspection procedures for determination of his conformance to the detailed sampling, examination and testing procedures prescribed in the specification and contract, the elements specified

below shall be included in the review and evaluation by the Government inspector:

(a) *Examination procedures.* (1) Observation of the supplier's procedures concerning lot formation and segregation requirements when specified;

(2) Observation of the supplier's sampling procedures or unit-by-unit examination (see Supply and Logistics Handbook H–105, dated April 27, 1954, "Administration of Sampling Procedures for Acceptance Inspection," for established basic principles of sampling inspection);

(3) Determination that the supplier's examination includes all of the various characteristics or defects listed in the specification or contract and that examination procedures comply with any special gaging and instrumentation requirements;

(4) Review to determine that the acceptability criteria (e. g. acceptance numbers from appropriate sampling plans of MIL–STD–105 corresponding with the specified Acceptable Quality Levels (AQL) are as specified; and

(5) Review of supplier's screening procedures when acceptability criteria for sampling inspection are not satisfied.

(b) *Test procedures.* (1) Observation of the supplier's procedures concerning lot formation and segregation requirements when specified;

(2) Observation of the supplier's sampling procedures or unit-by-unit testing (see Supply and Logistics Handbook H–105);

(3) Review of supplier's schedule and procedures to determine that all required tests are included and to determine that testing methods, analyses and apparatus conform to specification or contract requirements;

(4) Review to determine that acceptability criteria for sampling for testing are in conformance with specification or contract requirements; and

(5) Review of supplier's 100 percent re-test procedures when acceptability criteria for sampling are not satisfied and 100 percent retest is appropriate.

§ 253.9 Inspection and calibration of the supplier's gages, measuring and test equipment.

In inspecting the supplier's inspection equipment, the Government inspector will determine that the supplier has available and utilizes correctly gaging, measuring and test equipment of required accuracy and that the instruments are of proper type and range to make measurements of the required accuracy. The supplier will have available a set of master gages, standards and appropriate instruments for regularly scheduled calibration of his inspection equipment. Records of such regularly scheduled calibration will be maintained by the supplier and made available for review by the Government. Periodically, the calibration of gages, standards and instruments will be checked.

§ 253.10 Examination of the supplier's inspection records.

The Government inspector will examine the supplier's records of examinations and tests in order to determine that these records are pertinent and complete regarding the detailed requirements of the specification and contract. The inspection record form should include provision for entering information on appropriate item identification, lot size, acceptability criteria, results of examination or tests expressed as attributes or variables data and disposition of the materiel as in conformance or nonconformance to acceptability criteria established in the specification or contract.

§ 253.11 Performance of product verification inspection by the Government.

Product inspection by the Government inspector to verify the supplier's compliance with the quality assurance provisions of the specification and other technical contract requirements, shall be conducted to establish that:

(a) *The supplier's inspection records are reliable.* The Government inspector will perform complete or partial re-inspection on either all of the supplier's sample units represented on the records or a sample of these units to establish the reliability of the supplier's inspection records.

(b) *The supplier's inspection records represent true product quality.* The Government inspector will select, independently of the supplier, samples from submitted lots for examination and tests to substantiate that the supplier's inspection records represent the true quality of the product.

PART 255—DEPARTMENT OF DEFENSE POLICIES AND PROCEDURES FOR ASSURING THE QUALITY OF PRODUCTION OF COMPLEX SUPPLIES AND EQUIPMENT

Sec.

255.1 Purpose.
255.2 Applicability.
255.3 Background.
255.4 Policy.
255.5 Minimum requirements for contractors' regulation of quality.
255.6 Documentation.
255.7 Special requirements.
255.8 Minimum requirements for military agencies' inspection practices.

AUTHORITY: §§ 255.1 to 255.8 issued under Chapter 145, 10 U.S.C.

§ 255.1 Purpose.

The purpose of the policies and procedures set forth in this part is to establish uniform and economical practices for determining the acceptability of complex supplies and equipment.

§ 255.2 Applicability.

(a) This part is applicable to the Departments of the Army, Navy and Air Force in the performance of procurement inspection of all supplies and equipment, except (1) standard commercial items, and (2) items for which the policies and procedure included in Part 253 of this chapter (22 F.R. 4254), (DoD Inst. 4155.8, "DoD Procurement Inspection Policies and Procedures for Items Covered by Military and Federal Specifications," May 7, 1957), provide adequate and economical assurance of product acceptability. Ordinarily, the following types of items are included within the scope of this part:

(1) Equipment of complex design, such as aircraft, ships, tanks and guided missiles;

(2) Major components of equipment, such as fire control or navigating systems, engines, turbines and rocket motors;

(3) Parts of these components, such as assemblies, accessories or pieces, when application of this policy is technically or economically desirable.

(b) Departmental Secretaries are authorized to exempt specific contracts from the provisions of this part when this policy is incompatible with the technical objective of the contract, required project management flexibility, or military urgency. Appropriate arrangements shall be made to assure that exceptions to the provisions of this Instruction are subject to effective administrative control at the Secretarial level.

§ 255.3 Background.

Because of configuration, innumerable design characteristics, and life and reliability requirements, complex supplies and equipment are not amenable to adequate evaluation by inspection and testing only. Complex supplies and equipment must be produced under regulated conditions if adequate assurance of quality is to be realized. Systematic control of manufacturing processes by the producer is an essential prerequisite for assuring the quality of such items. Likewise, it is essential that the Government verify systematically that such control is, in fact, established and exercised by contractors.

§ 255.4 Policy.

(a) Contracting officers shall require by contract that suppliers establish and maintain quality control over manufacturing processes of complex equipment.

(b) Contracting officers shall indicate by contract clause, exhibit, or specification reference, the essential prerequisites necessary for the control of the quality of manufacturing and shall include in such contract clause, exhibit or specification, as a minimum, the requirements listed in §§ 255.5 and 255.6.

(c) Military inspection agencies shall verify the adequacy of contractors' quality control and shall incorporate into inspection management the procedures outlined in § 255.8.

§ 255.5 Minimum requirements for contractors' regulation of quality.

Contracting officers shall require that contractors establish and maintain quality control measures appropriate for the product involved. These quality control measures shall be applicable to:

(a) Manufacturing processes for the purpose of assuring that the product is continuously produced in accordance with technical requirements (e.g., pertinent design, proprietary and operational instructions).

(b) Drawings and changes so that manufacturing methods and operations reflect current technical requirements.

(c) Testing and inspection so that practices and equipment provide the

means for optimum evaluation of characteristics subjected to inspection or test.

(d) Fabrication and delivery of products so that nonconforming products are not inadvertently tendered to the Government.

§ 255.6 Documentation.

Contracting officers shall require that contractors establish and maintain quality control measures for documentation. The contractors' measures shall effectively control the preparation, authorization, use and disposition of instructions and records pertinent to quality.

§ 255.7 Special requirements.

Contracting officers' requirements for contractors' regulation of quality need not be limited only to the provisions of §§ 255.5 and 255.6.

§ 255.8 Minimum requirements for military agencies' inspection practices.

Each military agency's program for evaluation of a contractor's control of quality shall encompass:

(a) Systematic planning of the military agency's inspection operations, including:

(1) Identification of the specific products, processes and procedures listed in §§ 255.5 and 255.6 to be subjected to Government examination, as well as identification of the specific characteristics of such products, processes or procedures to be observed;

(2) Provisions for appropriate distribution of the agency's efforts between inspection of products and inspection of the contractor's methods regulating quality.

(b) Maintenance of suitable inspection records by the military agency that reflect:

(1) The nature of all surveillance and inspection actions, together with the number of observations made and the number and type of deficiencies found;

(2) Decisions regarding the acceptability of the products, the processes and the procedures, together with action taken to correct deficiencies found;

(3) Distribution of inspection effort by the military agency.

(c) Management action which:

(1) Is based on analysis of contractor and Government (i) product inspection data and (ii) methods inspection data;

(2) Assures that inspection manpower and facilities are used as effectively as possible;

(3) Assures that in-service product deficiency and failure information received from the using military agencies is effectively analyzed and that necessary corrective action is initiated expeditiously and reviewed for effectiveness.

The inspection practices for military agencies need not be limited to practices required by this section.

PART 257—DEPARTMENT OF DEFENSE ORIGIN PROCUREMENT INSPECTION OF SUBSISTENCE

Sec.
257.1 Purpose.
257.2 Applicability.
257.3 Objectives.
257.4 Assignment.
257.5 Inspection costs.
257.6 Inspection administration.

AUTHORITY: §§ 257.1 to 257.6 issued under sec. 2202, 70A Stat. 120; 10 U. S. C. 2202. Interpret or apply secs. 2451–2456, 70A Stat. 138–140; 10 U. S. C. 2451–2456.

§ 257.1 Purpose.

This part establishes the Department of Defense policy concerning the utilization of the subsistence inspection and grading services and facilities of the Department of Agriculture in origin inspection incident to subsistence procurements.

§ 257.2 Applicability.

The provisions of this part are applicable to the Departments of the Army, Navy (including the Marine Corps), and Air Force. The Department of Agriculture has agreed to carry out the intent of this part.

§ 257.3 Objectives.

Maximum utilization of existing subsistence inspection and grading services of the Department of Agriculture by the Department of Defense is desired to eliminate overlapping and duplication of such services in processing plants, and to effect economies and efficiencies in carrying out the functions of the Government.

§ 257.4 Assignment.

(a) The Single Manager for subsistence is responsible for determining that wholesale stocks of subsistence originating in processing plants comply with the sanitary standards prescribed by the Department of Defense and, in accordance with the provisions of this part, for arranging for the inspection, grading and acceptance of wholesale stocks of subsistence procured for the military departments. Such inspection and grading shall be performed to the satisfaction of the Single Manager.

(b) To accomplish the objectives outlined in § 257.3 within the continental limits of the United States, the Single Manager for subsistence shall:

(1) Make maximum practical use of the Department of Agriculture subject, however, to prior requirements for retention of an adequate food inspection workload to train Veterinary Services personnel and to provide a base for rotation between CONUS and overseas.

(2) Utilize the Veterinary Services to establish an adequate verification inspection program to protect the interest of the Department of Defense.

(3) Adjust plant assignments whenever the interest of economy or efficiency will be served.

(c) The provisions of § 257.4(b) apply to the following categories:

(1) Fresh fruits and vegetables.

(2) Processed fruits and vegetables and related items, including frozen fruits and vegetables.

(3) Grain products.

(4) Meats, meat products and dairy products.

(5) Miscellaneous subsistence not enumerated above or included in paragraph (c) of this section.

(d) The Single Manager for subsistence will continue to utilize the poultry inspection and grading services of the Department of Agriculture in accordance with the terms of the currently existing agreement between them. This agreement provides that in all instances where, at the time of a Single Manager contract award for poultry and poultry products, the Department of Agriculture maintains continuous inspection and grading of poultry and poultry products by Government employees qualified to perform all inspection and grading necessary to assure compliance with contract requirements, such inspection and grading will be performed by the Department of Agriculture.

(e) The Single Manager for subsistence shall perform or arrange for performance of origin procurement inspection of subsistence in those instances where the Department of Agriculture does not provide this service under the provisions of paragraphs (b), (c) and (d) of this section, in accordance with paragraph VI. D. of DoD Directive 5160.11, "Single Manager Assignment for Subsistence."

(f) The following subsistence items shall be inspected by the Single Manager for subsistence or by his designees:

(1) Water foods.

(2) Assembly, unit packaging and shipping of combat, operational and survival rations.

(3) Coffee and tea.

§ 257.5 Inspection costs.

With the exception of the ante-mortem, post-mortem and sanitary inspection incident to red-meat vendors which are performed in accordance with federal statutes and funded by appropriated funds, the Department of Agriculture shall be reimbursed by the Single Manager for all costs of inspection and grading services performed on Single Manager subsistence procurements.

§ 257.6 Inspection administration.

Inspection and grading services performed by the Department of Agriculture for the military departments shall be reported in accordance with prescribed military inspection procedures with a minimum of paperwork. Inspection and acceptance stamps of the Department of Agriculture shall be accepted by all military departments. The Single Manager for subsistence shall fully cooperate in familiarizing Department of Agriculture inspection personnel with military inspection administrative details.

PART 260—PREFERENCE TO BLIND PERSONS IN OPERATING VENDING STANDS

Sec.
260.1 Purpose.
260.2 Background.
260.3 Definitions.
260.4 Policy.

AUTHORITY: §§ 260.1 to 260.4 issued under sec. 1, 49 Stat. 1559, as amended; 20 U. S. C. 107.

§ 260.1 Purpose.

To establish uniform policies for assuring preference to blind persons in operating vending stands on Federal property under the jurisdiction of the Department of Defense.

§ 260.2 Background.

It is the purpose of the Randolph-Sheppard Vending Stand Act to provide blind persons with remunerative employment so as to stimulate efforts by them to make themselves self-supporting. To achieve this purpose, the head of each department or agency of the Government is required after consultation with the Secretary of Health, Education, and Welfare and with the approval of the President to prescribe regulations which would assure preference to certain licensed blind persons to operate vending stands on Federal property, subject to the qualifications prescribed by that Act.

§ 260.3 Definitions.

The following definitions are applicable to this part:

(a) "Federal property" means any building, land, or other real property owned, leased, or occupied by any department or agency of the United States or any instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any Territory or possession of the United States.

(b) "Installation" means land and improvements thereon, under the control of the Departments of the Army, Navy or Air Force, which have been established by order of any such department, and at which functions of these departments are administered.

(c) "Jurisdiction" includes control of the maintenance, operation and protection of Federal property.

(d) "Vending machine" is any coin-operated machine which automatically vends or delivers tangible personal property.

(e) "Vending stand" includes such shelters, counters, shelving, display, and wall cases, refrigerating apparatus, and other appropriate auxiliary equipment as are necessary for the vending of merchandise.

§ 260.4 Policy.

(a) The Secretaries of the Army, Navy and Air Force are authorized to permit the construction, establishment or operation of vending stands on military or naval installations or other Federal property under their jurisdiction. Such permission may be granted under a revocable license in which the conditions for occupancy are set forth clearly.

(b) Where a vending stand may be properly and satisfactorily operated by a blind person, the Secretaries of the Army, Navy and Air Force shall give preference as to the operation of such a vending stand to a blind person licensed by a state agency as provided in the Randolph-Sheppard Vending Stand Act. The Secretaries shall provide for cooperation with the appropriate state licensing agency in selecting the type, locations or relocation of vending stands to be operated by licensed blind persons. The foregoing preference may be denied or revoked if it is determined by the local Commanding Officer:

(1) That existing security measures relative to location of the vending stand or to the clearance of the blind operator thereof cannot be followed;

(2) That vending stand standards relating to appearance, safety, sanitation, and efficient operation cannot be met;

(3) That for any other reasons the interests of the United States would be adversely affected or the Department of Defense would be unduly inconvenienced thereby.

(i) Loss of revenue by reason of granting a rent-free permit for operation of a vending stand by a licensed blind person shall not be the basis for denying such permit. However, the permit will not be granted if to do so would seriously affect the primary mission of the Department of Defense by reducing revenue below the point which is necessary for the maintenance of a reasonably adequate morale and welfare program.

Certain types of nonappropriated fund operations such as post exchanges, motion pictures, and restaurants have traditionally been used by the Department of Defense to foster morale and welfare of those engaged in the defense effort. Revenue from these activities is used to supplement appropriated funds in conducting a well rounded morale and welfare program. No permits should be granted that will place the morale and welfare program in jeopardy.

(c) The preference established in paragraph (b) of this section shall be protected from the unfair or unreasonable competition of vending machines. No vending machine shall be located within reasonable proximity to a vending stand operated by a licensed blind person if the vending machine vends articles of a type sold at such stand except that where local needs require the placement of such a vending machine, operation of and the income from such vending machine shall be assumed by the blind vending stand operator.

(d) So far as feasible, items sold at vending stands operated by the blind will consist of newspapers, periodicals, confections, tobacco products, articles dispensed automatically or in containers or wrappings in which they are placed before receipt by the vending stand, and such other suitable articles as may be approved for each vending stand location.

PART 262—CONTRIBUTIONS OF FEDERAL FUNDS TO THE STATES UNDER THE NATIONAL DEFENSE FACILITIES ACT OF 1950, AS AMENDED

Sec.

262.1 Background.
262.2 Policies and procedures.
262.3 Authority of DOD agencies.

AUTHORITY: §§ 262.1 to 262.3 issued under secs. 2231–2238, 70A Stat. 120–123; 10 U. S. C. 2231–2238.

§ 262.1 Background.

(a) The enactment into law of the National Defense Facilities Act of 1950, 64 Stat. 829, established enabling legislation to provide facilities for the training of all Reserve Components of the Armed Forces. 69 Stat. 593 amended certain of the provisions of 64 Stat. 829. The policies promulgated herein are concerned with section 3(b) and 3(c) of the act, as amended, which authorize contributions of Federal funds to the several States and Territories of the United States, Puerto Rico and the District of Columbia (referred to in this part as the State).

(b) The act, as amended, provides for contributions of Federal funds to the State as the Secretary of Defense shall determine to be necessary:

(1) To expand, rehabilitate, or convert facilities owned by such State to the extent required for the joint utilization of such facilities;

(2) To expand, rehabilitate, or convert facilities owned by such State to the extent made necessary or to acquire, construct, expand, rehabilitate, or convert such additional facilities as he shall determine to have been made essential, by any conversion, redesignation, or reorganization of a unit or units of the National Guard of the United States or the Air National Guard of the United States, requested or authorized by the Secretary of the Army or the Secretary of the Air Force, respectively;

(3) For the acquisition, construction, expansion, rehabilitation or conversion by such State of such additional facilities that have been made essential by any increase in the strength of the National Guard of the United States or the Air National Guard of the United States.

(c) It is recognized that many existing State-owned or controlled facilities contain certain types of space, such as drill halls, which were not being fully utilized because of limited support space, such as administrative offices, storage space, locker rooms, etc. Contributions of Federal funds to the State for the expansion of these facilities to provide this additional space will insure the maximum fiscal economy through the full and joint utilization of common space to the maximum extent practicable.

(d) It is also recognized that many existing State-owned or controlled facilities cannot physically accommodate certain equipment involved upon conversion, redesignation or reorganization of the organizational units previously assigned to those facilities. A provision of 69 Stat. 593 (see paragraph (b) (2) of this section) will relieve the States of the inequitable burden of financing the cost of physical changes in existing facilities made necessary by such organizational changes requested or authorized by the Federal Government.

(e) An additional purpose of the act is to authorize contributions to the State for the construction or acquisition of additional facilities. This will relieve, in some measure, the inequitable burden placed upon the several States through the increase in the number of units and the strength of units of the National Guard over that which existed prior to World War II.

§ 262.2 Policies and procedures.

(a) Each project toward which a contribution is granted by the Federal Government under the authority of the act, as amended, shall be covered by an agreement between the United States and the State. The purpose of such agreement is to delineate the equities and obligations involved and thereby assure not only a clear understanding of these obligations but definitely to establish these equities.

(b) The following policies are to be used as a guide in negotiating and executing agreements with States in the implementation of sections 3 (b) and 3 (c) of the act, as amended:

(1) All work authorized pursuant to section 3 (b) or 3 (c) of the act, as amended, shall be done in accordance with the laws of the State in which the project is located, and under the supervision of officials of such State, subject to inspection and approval by the Secretary of Defense, or his delegate. Pro-

visions definitive of such inspection and approval shall be included in said agreement, to accomplish the purpose of assuring that the work performed toward which the Federal contribution is made complies with the plans, specifications, criteria and standards approved for the project by the Secretary of Defense, or his delegate. Except for supervision of a project, which function is reserved by law to State officials, the services of the Chief of Engineers or the Chief of the Bureau of Yards and Docks may be utilized to the extent mutually agreed by the State and the Military Department concerned.

(2) A separate agreement shall be entered into between the State and the Federal Government for each project covering the terms, conditions, equities and obligations of the parties.

(3) The State, as defined in section 7 (c) of the act, as amended, shall certify that it has the legal authority and the necessary funds to accomplish its share of the project, that it will furnish evidence satisfactory to the Department of Defense of a perfected title to, or other adequate property interest in, acceptable and suitable real estate, and that such real estate is located in an area appropriate, under local laws and ordinances relating to location and construction, to the use for which the facilities are intended.

(4) Plans, specifications and cost estimates shall be approved by the Federal Government.

(5) The agreement shall remain in full force and effect for the fixed term of years which represents the estimated useful life of the facility.

(6) When a facility is to be jointly utilized:

(i) The agreement shall identify the space, both within and outside the building or buildings, which is to be maintained and reserved for the exclusive use of those Reserve Components that are designated by the Federal Government;

(ii) The agreement shall identify the space, both within and outside the building or buildings, which is to be utilized in common by all Reserve Components assigned to the facility;

(iii) The agreement shall prescribe the extent of collaboration between the State and the Federal Government in the selection of the site location and the orientation of the facilities to be jointly and exclusively utilized by those Reserve Components which are designated by the Federal Government;

(iv) The agreement shall prescribe the costs to be borne by the Federal Government and by the State in maintaining the common use space, both within and outside the building or buildings, and in general administrative expense for janitorial and similar service. Each such agreement shall take cognizance of the net proceeds derived from leasing the facility or other arrangements and other income in accordance with section 4 (e) of the act, as amended;

(v) The agreement shall prescribe generally for the time and extent of the use by the various components, and prescribe the method of resolving conflicts in schedules for use of the facilities.

(7) Insofar as it is determined at the time the Federal contribution is made that it is impracticable for the State and the Federal Government to delineate the extent of the spaces to be jointly and exclusively utilized by those Reserve Components designated by the Federal Government, the agreement shall contain a covenant on the part of the State substantially as follows:

To make such facility available for joint utilization to the extent that the State shall hereafter deem it to be practicable.

In the event it is necessary to apply the concept of a "Master Agreement" contemplating future individual agreements with respect to specific projects, such "Master Agreement" shall contain an affirmative covenant on the part of the State in substantially the following form:

At the time each contribution is made by the Government, to negotiate concerning the extent to which the facility covered thereby will be made available for joint utilization as the term is defined in section 7 (e) of the National Defense Facilities Act of 1950, as amended.

(8) At no time during the term of the agreement shall such State permit any disposition or use to be made of such facility which will interfere with its use for the administration and training of units of the Reserve Components of the Armed Forces of the United States, or in time of war or national emergency of other units of the Armed Forces of the United States or any other use by the Federal Government.

(9) The State shall take necessary action, to the extent of its power or authority, to prohibit utilization by outside interests (such as adjacent land owners, public utility corporations, etc.) that would interfere with the use of the facility for its intended purpose.

(10) The State shall be required to maintain and preserve the facility in a state of good repair except that the Federal Government may contribute to the cost of maintenance to an extent commensurate with the joint utilization of the facility by those Reserve Components which are designated by the Federal Government. The agreement shall specify the basis for determining the extent of such contribution by the Federal Government. Each such agreement shall take cognizance of the net proceeds derived from leasing the facility or other arrangements and other income in accordance with section 4 (e) of the act, as amended. (See subparagraph (6) of this paragraph.)

(11) Where the State accomplishes the project by contract, the State shall let such contract in accordance with the laws of such State, and under regulations in current use by the Federal Government insofar as the application of such regulations by supervisory officials of the State is not precluded by nor inconsistent with the State laws. All contracts, subcontracts and change orders shall be subject to prior approval by the Federal Government.

(12) The Federal Government shall determine what costs incurred or to be incurred by the State are allowable under the terms and conditions of the agreement. When so requested by the State, such determination shall be made prior to the execution of any contract by the State, and the State shall be advised thereof in writing, subject to conformance with applicable Department of Defense policies, criteria, and standards.

(13) The State shall be required to maintain an accounting system which is acceptable to the Federal Government with respect to the construction work, as well as to the subsequent maintenance and operation of those facilities toward which the Federal Government contributes or will contribute funds for such maintenance and operation including those facilities to be jointly utilized by other Reserve Components.

(14) The contribution of funds by the Federal Government to the State shall be in accordance with a system whereby the Federal Government maintains adequate control of the expenditure of such funds until payment is due the contractor for work already completed. Payments, however, may be made periodically as work progresses, and the Federal share of the funds will be obligated upon the approval of the construction contract by the Federal Government, and will be made available in accordance with established fiscal procedures.

(15) The appropriate legal authority of the State shall certify that in his opinion the agreement is legal and binding and that its execution is duly authorized, and, upon request of the Federal Government, the State shall furnish evidence of its authority to enter into the agreement.

(16) The agreement shall contain other clauses which, in the opinion of the cognizant Military Department and the State, are required to more specifically delineate the equities and obligations of both the State and Federal Government and which are not in conflict with the policies enumerated herein.

§ 262.3 Authority of DOD agencies.

Certain authority vested in the Secretary of Defense by the act, as amended, and as referred to in this part, has been delegated to certain officials in the Department of Defense. See 21 F.R. 1749, Mar. 21, 1956.

PART 264—INTERNATIONAL INTERCHANGE OF PATENT RIGHTS AND TECHNICAL INFORMATION

Sec.
264.1 Purpose and cancellation.
264.2 Scope.
264.3 Background.
264.4 Policy.
264.5 Claims for compensation.

AUTHORITY: §§ 264.1 to 264.5 issued under the Mutual Security Act of 1954, as amended (22 U.S.C. 1750 et seq).

§ 264.1 Purpose and cancellation.

The purpose of this part is to restate Department of Defense policy concerning the international interchange for defense purposes of patent rights and technical information. DOD Directive 2000.3, "Technical Property Interchange Agreements", dated April 15, 1954, is hereby superseded and cancelled. Delegation published at 19 F.R. 2523 is cancelled.

§ 264.2 Scope.

This part applies to the activities of all Department of Defense personnel involved in the international interchange for defense purposes of patent rights and technical information. The policy prescribed herein applies to unclassified as well as classified information, owned by the United States Government or privately owned, but does not apply to patents, patent applications, and technical information in the field of atomic energy.

§ 264.3 Background.

(a) Pursuant to the provisions of the Mutual Security Act of 1954, as amended, and of predecessor legislation superseded by that Act, the United States has entered into agreements for the Interchange of Patent Rights and Technical Information for Defense Purposes with Australia, Belgium, France, the Federal Republic of Germany, Greece, Italy, Japan, The Netherlands, Norway, Turkey, and the United Kingdom. The agreements, which are published in the Treaties and Other International Act Series, are basically similar in substance but are not identical. Under the agreements:

(1) Each government undertakes to facilitate the interchange of privately owned patent rights and of technical information through the medium of commercial relationships, to the extent permitted by the laws and security requirements of the contracting governments.

(2) When technical information is supplied by one government to the other for information only, the recipient government undertakes to treat the information as disclosed in confidence and to use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the owner to obtain patent or similar statutory protection.

(3) When technical information supplied by one government to the other discloses an invention which is the subject of a patent or patent application held in secrecy in the country of origin, the recipient government undertakes to accord similar treatment to a corresponding patent application filed in that country.

(4) When privately owned technical information is released by one government to the other and the recipient government uses or discloses the information, the owner shall, subject to the extent that the owner may be entitled thereto under the applicable law and subject to arrangements between the contracting governments regarding the assumption as between them of liability for compensation, receive prompt, just and effective compensation for such use and for any damages resulting from such use or disclosure.

(5) Each government is entitled to use for defense purposes without cost any invention which the other government (including government corporations) owns or to which it has the right to grant a license to use, except to the extent that there may be liability to any private owner of an interest in the invention.

(b) Each of these agreements establishes a Technical Property Committee, consisting of a representative of each contracting government, whose function it is to consider and make recommendations to the contracting governments on all matters relating to the subject of the agreement and to assist where appropriate in the negotiation of commercial or other agreements for the use of patent rights and technical information in the military assistance program.

(1) The Patent Advisor assigned to the Defense Staff of the U.S. Mission to the North Atlantic Treaty Organization and European Regional Organizations (USRO), Paris, France, is the United States representative to the Technical Property Committees in Europe. The J–4, Hq, United States Forces Japan, Tokyo, Japan is the United States representative to the United States-Japanese Technical Property Committee. A member of the Office of Assistant General Counsel, International Affairs, Office of the Secretary of Defense, is the United States representative to the United States-Australian Technical Property Committee. The appropriate representative should be consulted on all problems dealing with patent rights, technical information and related matters under the agreements.

(2) These representatives receive policy guidance from the Department of Defense. The Assistant Secretary of Defense for International Security Affairs is responsible within the Department of Defense for transmitting such policy guidance through appropriate channels. Guidance transmitted for the United States representative in Europe shall be forwarded to the Defense Advisor, USRO; guidance transmitted for the United States representative in Japan shall be transmitted to the Commanding General, United States Forces Japan. Such guidance is formulated, where appropriate, in the Interagency Technical Property Committee for Defense. The Interagency Technical Property Committee comprises representatives of the Departments of Defense, State, Commerce and Justice, the Government Patents Board, and the International Cooperation Administration. A representative of the Assistant Secretary of Defense for International Security Affairs is the Chairman of this Committee. An Industry Advisory Committee established by the Department of Commerce furnishes advice upon request to the Interagency Technical Property Committee, and assists in the dissemination of information with respect to the interchange of patent rights and technical information for defense purposes.

(c) Department of Defense problems arising in the United States in connection with the interchange of patent rights and privately owned technical information should be referred to the patent activity of the appropriate Military Department.

§ 264.4 Policy.

It is the policy of the Department of Defense to encourage and facilitate international interchanges of patent rights and technical information to further the common defense of the United States and friendly nations. In achieving this purpose, the following principles shall be observed.

(a) Classified military information shall be released only through Government channels and only when consistent with the National Disclosure Policy, or when approved as an exception to that policy.

(b) In accordance with the Congressional policy prescribed by section 413(a) of the Mutual Security Act of 1954, as amended (22 U.S.C. 1933(a)), and pursuant to the bilateral agreements referred to in § 264.3, commercial relationships shall be utilized whenever appropriate and to the maximum extent feasible in order to encourage the participation of private enterprise in the Mutual Security Program, to relieve the Department of Defense of administrative burdens, and to reduce the costs to the United States of such interchanges.

(c) In accordance with section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the utilization of commercial channels for the exportation of unclassified privately owned technical information relating to articles designated as arms, ammunition, and implements of war in the United States Munitions List shall be subject to the regulations issued by the Secretary of State pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934) (Title 22, Code of Federal Regulations, Chapter I, Subchapter M). (The term "technical data" is used in those regulations to describe technical information relating to such articles).

(d) Technical information which might be privately owned may be released under paragraph (e) (1) or (2) of this section by Department of Defense Agencies to foreign governments if any one of the following conditions are met:

(1) The owner expressly consents to the proposed release;

(2) The United States, by contract or otherwise, has acquired or is entitled to acquire, the information under circumstances which permit the proposed release; or

(3) The Secretary of the Military Department concerned, or his designee, determines, under the authority of the

Mutual Security Act of 1954, as amended, that:

(i) The exigencies of the requirement for release to further the common defense do not allow sufficient time to obtain the consent of the owner; or

(ii) The owner refuses consent and the best interests of the United States would be served by the release.

(e) In accordance with the provisions of the agreements referred to in § 153.3, the release to foreign governments by Department of Defense agencies of technical information which might be privately owned shall normally be in accord with the following two step procedure:

(1) Release for information only.

(2) Permission for manufacture, or use, for defense purposes.

(f) (1) All technical information, whether privately owned or government owned, released to a foreign government by Department of Defense Agencies shall be marked with the following restrictions:

1. This information is accepted for defense purposes only.

2. This information shall be accorded substantially the same degree of security protection as such information has in the United States.

3. This information shall not be disclosed to another country without the consent of the United States.

(2) When technical information which might be privately owned is released for information only, the restrictive marking shall also contain these additional notations:

4. This information is accepted upon the understanding that it might be privately owned.

5. This information is accepted solely for the purpose of information and shall accordingly be treated as disclosed in confidence. The recipient Government shall use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the private owner thereof to obtain patent or other like statutory protection therefor.

6. The recipient Government shall obtain the consent of the United States if it desires that this information be made available for manufacture, or use, for defense purposes.

(g) When technical information which might be privately owned is released under the procedures set forth herein, the owner, if known, shall be furnished:

(1) Notice of the release;

(2) The identity of the recipient, if not contrary to security regulations;

(3) Notice that the recipient has been advised that the information might be privately owned; and

(4) Notice of the restrictions to which the release is subject.

§ 264.5 Claims for compensation.

(a) With respect to interchanges in furtherance of the purposes of the Mutual Security Act of 1954, as amended, section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758) provides the exclusive remedy for compensation for infringement within the United States of a patent issued by the United States and for damage resulting from the disclosure by the United States of privately owned technical information.

(b) The Secretaries of the Military Departments are hereby authorized to exercise the power and authority conferred by section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758) to enter into agreements with claimants in full settlement and compromise of any claim against the United States thereunder, subject to such rules and regulations, if any, as the Secretary of Defense may promulgate from time to time. The Secretaries of the Military Departments are authorized to make successive redelegations in writing of this power and authority to any officer, employee, board or agent of their respective departments.

(c) Funds appropriated for military assistance pursuant to the Mutual Security Act of 1954, as amended, which have been made available to a Military Department may be used to settle claims under section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758). In addition, in those cases where the provisions of 10 U.S.C. 2386 are applicable, funds appropriated for a Military Department available for making or procuring supplies may be used to settle such claims.

PART 266—NATIONAL INDUSTRIAL RESERVE REGULATIONS

Subpart A—General

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AUTHORITY: §§ 266.100 to 266.701–2 issued under sec. 213, 61 Stat. 505, as amended; 5 U. S. C. 171h.

Subpart A—General

INTRODUCTION

§ 266.100 Scope of §§ 266.100 to 266.107.

Sections 266.100 to 266.107 set forth (a) introductory information pertaining to this part (its purpose, applicability, effective date, and arrangement), and (b) instructions for implementing and amending this part.

§ 266.101 Purpose of regulations in this part.

The regulations in this part, issued by the Secretary of Defense, establish for the Department of Defense, the General Services Administration, and disposal agencies of the Government, policies and procedures relating to the establishment and administration of the National Industrial Reserve under the authority of the National Industrial Reserve Act of 1948, Public Law No. 883, 80th Congress (referred to in this subpart as the "act").

§ 266.102 Applicability of regulations in this part.

The regulations in this part shall apply to the administration of all property in the National Industrial Reserve, and to all transfers and dispositions of property into and out of the National Industrial Reserve which may be effected on or after the effective date of the regulations in this part. It shall also apply, to such extent as is practicable, to transfers and dispositions of property effected prior to the effective date of the regulations in this part but shall not be construed to invalidate any action taken or any transfer, disposition, or other transaction effected prior to such effective date. Rules, regulations and directives of the Department of Defense, the General Services Administration, and disposal agencies of the Government or of any department or subdivision of any of them, affecting property in the National Industrial Reserve not in conflict with the regulations in this part, as from time to time amended, shall remain in full force and effect. Anything in this subpart to the contrary notwithstanding, the regulations in this part shall have no application to property of the Army, Navy, or the Air Force which has not heretofore, or is not hereafter, determined to be surplus to its needs and responsibilities by the Department having jurisdiction thereover.

§ 266.103 Effective date of regulations in this part.

The regulations in this part shall be effective on and after April 1, 1949.

§ 266.104 Amendment of regulations in this part.

The regulations in this part may be amended from time to time by the Secretary of Defense. Unless otherwise specifically provided in any amendment, compliance therewith shall not be mandatory until thirty days after the date of its issuance, although compliance shall be authorized from such date.

§ 266.105 Procedures for implementing the regulations in this part.

The Administrator of General Services, and the head of any disposal agency may implement the regulations in this part by prescribing for their respective departments or agencies detailed procedures which are not inconsistent with the regulations in this part. Copies of such procedures shall in each instance be forwarded to all other interested departments or agencies. Questions of interpretation of the regulations in this part shall be resolved by the Secretary of Defense.

§ 266.106 Delegations of authority.

The Secretary of Defense, the Administrator of General Services, and the head of any disposal agency may to the extent permitted by law, delegate, and provide for the sub-delegation of, the authority and administrative functions imposed upon each of them respectively by the act or by the regulations in this part.

§ 266.107 Periodic reports to the Secretary of Defense.

For the purposes of the report required to be submitted by the Secretary of Defense to the Congress on April 1 of each year under section 12 of the act, the Administrator of General Services and the head of each disposal agency having control of properties in the National Industrial Reserve shall, on or before February 1 of each year, submit to the Secretary of Defense a report of: (a) All of the property under his control in the National Industrial Reserve as of January 1 of such year; (b) the properties which have been received by him or certified for transfer to him during the preceding twelve months to become a part of the National Industrial Reserve; (c) the physical condition of each of the properties in the National Industrial Reserve; (d) the probability of disposal of each of such properties under the terms of the National Security Clause; (e) the approximate dates when determination as to disposability of each of such properties will be made; and (f) such recommendations as he may wish to make with respect to the administration of the properties under his control, or with respect to the need for amendment of the act or related legislation.

DEFINITIONS OF TERMS

§ 266.201 Definitions.

When used in the regulations in this part terms shall be defined as set forth in §§ 266.201–1 to 266.201–12.

§ 266.201–1 Act.

The term "act" shall mean the National Industrial Reserve Act of 1948 (Public Law 883, 80th Congress, Ch. 811, Second Session, act of July 2, 1948).

§ 266.201–2 National Industrial Reserve.

The term "National Industrial Reserve" shall mean (a) that excess industrial property which has been or shall be sold, leased, or otherwise disposed of by the United States subject to a National Security Clause, (b) that excess industrial property of the United States which, not having been sold, leased or otherwise disposed of subject to a National Security Clause, shall be transferred to the General Services Administration to be held or disposed of under the provisions of the act, and (c) that excess industrial property under the control of any executive department or independent establishment in the executive branch of the Government, including any wholly-owned Government corporation, which is not required for its immediate needs and responsibilities as determined by the head of such department or establishment and which shall be designated by the Secretary of Defense pursuant to section 4 of the act as a part of the National Industrial Reserve.

§ 266.201–3 Excess industrial property.

The term "excess industrial property" shall mean (a) any machine tool, (b) any industrial manufacturing equipment, and (c) any industrial plant, which tool, equipment, or plant is under the control of any executive department or independent establishment in the executive branch of the Government, including any wholly-owned Government corporation, and which is not required for its immediate needs and responsibilities, as determined by the head thereof.

§ 266.201–4 Machine tool.

The term "machine tool" shall mean any tool which is operated by power and is partly or wholly automatic.

§ 266.201–5 Industrial manufacturing equipment.

The term "industrial manufacturing equipment" shall mean any equipment which is used in the production of an article or product, including all tools and equipment connected with a production line or assembly line, but excluding equipment used solely for nonproductive or administrative purposes. (For example, a dolly used for moving parts from one operation to another on the factory floor would be included within this definition, whereas a general-purpose truck used for collections and deliveries outside of the plant would be excluded.)

§ 266.201–6 Industrial plant.

The term "industrial plant" shall mean any plant (including structures on land owned or leased to the United States substantially equipped with machinery, tools, and equipment) which is capable of economic operation as a separate and independent industrial unit and which is not an integral part of an installation of a private contractor. For purposes of this definition the following factors shall be taken into consideration:

(a) Special structural design establishing special purpose—for example, vaulted ceilings for aircraft assembly plants, establishing purpose, regardless of tooling or other equipment.

(b) The removal of tools and equipment for safe storage shall not be considered to change the character of a structure as an industrial plant, if otherwise meeting the requirements of this definition.

(c) The presence of assembly lines, machine bases, casting pots, special furnaces, or similar installations, shall be given consideration in determining whether a structure is substantially equipped, within this definition.

(d) A plant designed and equipped for one or more, but not all, of the manufacturing processes in the production of a particular material or product, may be an "independent industrial unit," within this definition.

(e) The lease, sale, or transfer of a portion or division of an industrial plant need not be considered to change the character of such industrial plant within this definition, if such portion or division can be restored to its former status by exercise of rights reserved to the Government.

(f) The lease or sale, subject to a National Security Clause, of the land (including protection areas) or underground improvements of an ordnance plant shall not be considered to change the character of such ordnance plant as an industrial plant within this definition.

§ 266.201–7 Nonprofit educational institution or training school.

The term "nonprofit educational institution or training school" means any school, training school, school system, library, college, university, research foundation, or other similar institution, organization, or association which is organized for the primary purpose of carrying on instruction or research in the public interest, and which is not organized or operated for profit.

§ 266.201–8 National Security Clause.

The terms "National Security Clause" and "the Clause", shall mean (a) those terms, conditions, restrictions, and reservations which are presently contained in instruments of transfer or lease of property to assure that such property will be available for purposes of national defense; and (b) those terms, conditions, restrictions and reservations formulated pursuant to the act, to be included in instruments of transfer of property in the National Industrial Reserve, in order to assure that such property will be available for purposes of national defense.

§ 266.201–9 Transfer.

The term "transfer" shall mean transfer or other disposition of property in the National Industrial Reserve made to another department or agency of the Government, pursuant to the provisions of the act.

§ 266.201–10 Disposal.

The term "disposal" shall mean any sale, lease, loan, or other disposition of property in the National Industrial Reserve made to a person other than a department or agency of the Government, pursuant to the provisions of the act.

§ 266.201–11 Transferee.

The term "transferee" shall mean any person, department, or agency to whom property in the National Industrial Reserve shall be transferred or disposed of either by sale, lease, loan or otherwise pursuant to the act.

§ 266.201–12 Disposal agency.

The term "disposal agency" shall mean any Governmental department, agency, or corporation having the authority to dispose of property which is excess to its needs, as well as any agency which has been created for the purpose of disposing of any excess Government property.

DELEGATIONS OF AUTHORITY

§ 266.300 Scope of §§ 266.300 to 266.304.

Sections 266.300 to 266.304 deal with the delegations of the authority of (a) the Secretary of Defense and (b) the Administrator of General Services, under the act.

§ 266.301 Delegation of authority by the Secretary of Defense.

(a) Under date of August 13, 1953, the Secretary of Defense by DOD Directive Number 5131.1, paragraph 17b, made the following delegation to the Assistant Secretary of Defense (Properties and Installations): Administering the responsibilities of the Secretary of Defense with respect to the reserve of plants provided for in the National Industrial Reserve Act of 1948 (Pub. Law 883, 80th Cong.).

(b) Under date of August 13, 1953, the Secretary of Defense by DOD Directive Number 5126.1 Paragraph 16 made the following delegation to the Assistant Secretary of Defense (Supply and Logistics):

* * * and administering the responsibilities of the Secretary of Defense in relation to machine tool and production equipment reserves provided for in the National Industrial Reserve Act of 1948 (Pub. Law 883, 80th Cong.).

§ 266.302 Action by the Assistant Secretaries of Defense; subdelegation.

The authority delegated to the Assistant Secretaries of Defense in § 266.301 may be subdelegated to such subdivisions and agents of the offices of Assistant Secretaries of Defense as the Assistant Secretary concerned may determine.

§ 266.303 Redelegation to Secretaries of military departments.

The Assistant Secretaries may, under the authority delegated to them by the Secretary of Defense, designate the Secretary of any one of the military departments of the Department of Defense to administer the provisions of the National Security Clause applicable to a particular excess industrial property in the National Industrial Reserve in the control of a transferee and may redelegate such authority as may be required to enable such Secretary to carry out such responsibility including, without limitation, authority to consent to alterations in the premises and disposition or removal of production equipment: *Provided, however,* That the provisions of the National Security Clause applicable to the property shall not be modified or waived, nor shall any dormant estate be activated or terminated (other than by its own terms) except pursuant to a determination by the Secretary of Defense.

§ 266.304 Delegation of authority by the Administrator of General Services.

By Transmittal Letter (Manual GS–1, Volume GS 1–2) No. 26 dated January 26, 1954, the Administrator of General Services delegated (GS 1–2 203.07) to the National Industrial Reserve Division, Public Buildings Service, Central Office as follows:

(a) To prescribe policies and procedures covering the maintenance of plants in standby and preparation for layaway, and the storage of NIR tools and equipment.

(b) To transfer, lease, dispose of, or lend property in the NIR in accordance with the direction or authorizations of the Secretary of Defense under section 7 of the NIR Act.

(c) To exercise the authority contained in section 210 (a) (11) of the act.

Subpart B—Procedures for Designation and Maintenance of Properties in the National Industrial Reserve

DESIGNATION

§ 266.350 Scope of §§ 266.350 to 266.354.

Sections 266.350 to 266.354 set forth the procedures applicable to the designation by the Secretary of Defense

of excess industrial properties which are to become a part of the National Industrial Reserve under the provisions of the act. It applies to two general categories of property—Those properties which are under the control of disposal agencies, and those properties which have been disposed of by the United States to private individuals, firms, corporations or other persons, subject to a National Security Clause. It also applies to excess industrial properties which have been disposed of without National Security Clause restrictions and which at a future time may revert to the Government. Sections 266.350 to 266.354 also set forth the procedures by which the latter type of properties may be designated for future inclusion in the National Industrial Reserve.

§ 266.351 Designation of excess industrial properties under the control of disposal agencies.

§ 266.351–1 Reports.

Each disposal agency created for the purpose of disposing of excess Government property generally, shall within 90 days after the effective date of the regulations in this part, furnish the Secretary of Defense with a statement of the industrial plants held by it for disposal, and shall on the 1st days of February and August of each year submit a report to the Secretary of Defense of additional industrial plants received by it for disposal during the six months' period ending the preceding January 1 and July 1, respectively, and of all industrial plants previously designated for the reserve which shall have been disposed of by it, during the said six months. The head of every other disposal agency shall (a) within 90 days after the effective date of the regulations in this part, furnish the Secretary of Defense with a statement of all of the industrial plants under its control which have been determined not to be required for the immediate needs and responsibilities of such agency, and (b) notify the Secretary of Defense immediately upon a determination in the future that an industrial plant under its control is no longer required for the immediate needs and responsibilities of such agency. The Secretary of Defense will specify the inventories and lists of property to be furnished to it by the heads of disposal agencies having machine tools, industrial manufacturing equipment or other personal property under their control as a part of the National Industrial Reserve.

§ 266.351–2 Notice of designation.

In the case of property under the control of a disposal agency and to be designated for the National Industrial Reserve by imposition of National Security Clause restrictions upon its transfer, the Secretary of Defense will designate such property by a written notice to the head of the disposal agency having control of the property of its determination that such property is to become a part of the Reserve, and shall prescribe the provisions of the National Security Clause which shall be applicable to it.

§ 266.351–3 Effective date of designation.

From and after the date of notice of designation, the property specified in such notice shall be deemed to become a part of the National Industrial Reserve.

§ 266.351–4 Recommendation of property to be designated for National Industrial Reserve.

The Secretaries of the military departments of the Department of Defense, the Director of the Office of Defense Mobilization, the Chairman of the Atomic Energy Commission, and the head of any other governmental department or agency having functions involving the national defense, may on behalf of his respective department, board, commission, or agency recommend the designation of specific excess industrial property, whether or not under his control, for inclusion in the National Industrial Reserve. Such recommendation should include a statement of the reasons that are believed to justify the proposed designation and should be forwarded to the Secretary of Defense.

§ 266.352 Designation of excess industrial properties under the control of transferees.

§ 266.352–1 Property subject to the National Security Clause.

The properties heretofore disposed of which may be included in the National Industrial Reserve under section 3(a) of the act by virtue of having been disposed of by the United States subject to a National Security Clause will be designated by the Secretary of Defense. Such designation will be contained in a notice to the transferee to whom such property has been disposed of and to the head of the department or agency which has authority to administer the clause. The notice shall state that the terms and conditions contained in the instrument of transfer for the protection of the Government have been determined to constitute a National Security Clause within the meaning of the act, and that the property has been designated to become a part of the National Industrial Reserve.

§ 266.352–2 Effective date.

From and after the date of notice of designation, the property specified in the notice shall be deemed to have become a part of the National Industrial Reserve.

§ 266.352–3 Continuation of property in the Reserve upon termination of lease.

Upon termination of a lease of property subject to a National Security Clause, the property shall continue to be a part of the National Industrial Reserve unless and until the Secretary of Defense determines that such property is no longer needed therefor, and it shall not be offered for further lease, sale, or other disposition except subject to the conditions of the National Security Clause as prescribed by the Secretary of Defense. The head of the agency responsible for disposition of such property shall, on or before the expiration of the lease, notify the Secretary of Defense of the expiration date thereof and shall in such notice recommend the modifications, if any, that in his opinion should be included in the provisions of the National Security Clause applicable to the property for purposes of further disposition.

§ 266.353 Property not subject to National Security Clause, designation of, for future inclusion in the Reserve.

With respect to property under the control of a transferee by virtue of a lease or other instrument reserving an interest in the Government, but not containing a National Security Clause, the Secretary of Defense may designate such property to be included in the National Industrial Reserve at the expiration of the lease or vesting in possession of such interest in the Government. Such designation shall be in writing addressed to the head of the agency responsible for disposition of the property, and shall include a statement of the terms and conditions of the National Security Clause which shall be included in any future sale, lease, or other disposition of property.

§ 266.354 Records.

The Secretary of Defense will cause a list of the properties constituting the National Industrial Reserve to be maintained in sufficient detail and appropriately classified so as to indicate the nature, number, costs, and condition of the properties in the National Industrial Reserve, together with a statement of justification for their retention. Such records need not, however, include detailed or itemized inventories of small tools and equipment or other numerous articles although such information will be kept available to the extent that it is in existence. The Secretary of Defense will also maintain copies of the pertinent provisions of all instruments of transfer of properties in the National Industrial Reserve, including particularly the provisions of the National Security Clauses applicable thereto.

MAINTENANCE

§ 266.400 Scope of §§ 266.400 to 266.404–2.

Sections 266.400 to 266.404–2 deal with the subject of surveys and inspections of properties in the National Industrial Reserve, standards of maintenance of such properties, and provisions for the enforcement of such standards.

§ 266.401 Engineering surveys.

The General Services Administration shall, when requested by the Secretary of Defense, make an engineering survey of any industrial manufacturing plant that has been designated by the Secretary of Defense for transfer to the General Services Administration as a part of the reserve. Such survey may include a determination of (a) the present maintenance condition and status of the principal components of the plant, (b) the estimated cost of putting it in standby status and annual cost of maintenance in such status, (c) the cost of such rehabilitation and conversion as may be necessary to put the plant into full wartime operating status, (d) the estimated length of time that such rehabilitation and conversion would require, and (e)

any other related information that may be requested by the Secretary of Defense. Such survey should also include recommendations of the General Services Administration as to the standards of maintenance to be applied, recommended maintenance standards to be presented in successive steps so as to be readily adaptable to the amount of funds available for purposes of maintenance and rehabilitation of properties in the National Industrial Reserve. The General Services Administration shall submit four copies of each such engineering survey to the Secretary of Defense upon its completion.

§ 266.402 Periodic inspections.

The Secretary of Defense shall cause periodic inspections to be made of properties in the National Industrial Reserve, and such inspections shall be made not less often than annually for each such property. These inspections shall be conducted in such a manner and in such detail as to indicate whether or not the properties are being properly maintained in accordance with the prescribed standards, and whether the covenants of the National Security Clause are being performed.

§ 266.403 Special reports.

In the event that a survey or inspection reveals the existence of a breach of one or more of the covenants of the National Security Clause, or conditions which if permitted to continue would adversely affect the availability of a particular property for national defense, a special report of such breach or condition shall be given by the department, agency, or other person making such survey or inspection to the Secretary of Defense immediately upon the discovery thereof, and notice shall also be given to the transferee in control of the property.

§ 266.404 Maintenance standards.

§ 266.404–1 Plants.

The maintenance responsibilities of disposal agencies with respect to properties in the National Industrial Reserve which are under their control are as follows:

(a) Police protection against theft of property, destruction, and vandalism;

(b) Weather protection, with special emphasis on roofage, windows, water seepage, and drainage problems;

(c) Additional maintenance functions and standards for specific plants to be prescribed by the Secretary of Defense after consideration of the engineering surveys of such plant and other relevant factors.

§ 266.404–2 Machine tools and industrial manufacturing equipment.

Except as noted below, maintenance standards of machine tools and industrial manufacturing equipment which has not been disposed of shall be in accordance with the MIL–STD–107 as it may be amended from time to time. These standards may be modified in their application to specific properties by directive of the Secretary of Defense or, with the approval of the Secretary of Defense, by the agency in control of the property. Except as otherwise provided in the applicable National Security Clause, maintenance of such tools and equipment disposed of for use and operation by the transferee shall be in accordance with standards commensurate with sound business practice, having due regard for the Government's interest in preserving the productive capacity of such property.

Subpart C—The National Security Clause and Procedures for Transfers of Property

THE NATIONAL SECURITY CLAUSE

§ 266.450 Scope of §§ 266.450 to 266.454.

Sections 266.450 to 266.454 deal with the text of the National Security Clause, its incorporation in instruments of transfer, and procedures for its modifications, amendment, revocation, or termination.

§ 266.451 Short title.

The material set forth in § 266.453 shall be known and referred to as the "Standard National Security Clause, revised".

§ 266.452 Use of the National Security Clause in instruments of transfer.

(a) A National Security Clause shall be incorporated in all deeds, bills of sales, leases or other instruments transferring property in the National Industrial Reserve. Contracts of sale or letters of intent, executed in contemplation of such transfers, shall be made on the express condition that the instrument of transfer contain a National Security Clause. In incorporating the National Security Clause in instruments of transfer, the substance of the appropriate clause set forth in § 266.453 shall be used, but may be modified as necessary to conform to the context of the rest of the instrument. For leases of personal property, the real estate lease clause (§ 266.453–2) may be converted.

(b) Nothing in the National Security Clause shall be construed to preclude Government disposal agencies from including whatever terms they deem necessary or desirable in instruments of transfer so long as these other terms do not vitiate the Government's rights and benefits under the National Security Clause. In the case of leases, especially, provisions will have to be included for the purpose of protecting the Government's ownership generally, as distinguished from provisions aimed merely at preserving its national security interests. It is assumed these would include, without limitation, provisions with respect to payment of rent, taxes and charges, etc., insurance, subleasing and assigning, maintenance, nuisances, indemnity against liability, surrender upon expiration of the lease in the same or equivalent condition etc., and a right of entry in the Government to terminate the lease upon the lessee's breach of condition, bankruptcy or insolvency, etc.

§ 266.453 Text of the National Security Clause.

§ 266.453–1 National Security Clause for deeds of real property.

NATIONAL SECURITY CLAUSE

Whereas, the Secretary of Defense pursuant to section 4 (1) of the National Industrial Reserve Act of 1948 (Pub. Law 883, 80th Cong.) has designated the premises hereby conveyed a part of the National Industrial Reserve for the production of [insert designation of end item or basic material as the case may be] at an annual capacity of [insert quantity] and, whereas, pursuant to section 4 (4) of that act, it has authorized their disposal subject to a National Security Clause formulated in accordance with that Act; now therefore, in consideration of their respective obligations under this instrument, the parties hereto, for themselves, their heirs, successors, and assigns, do hereby enter into the terms, covenants, and conditions hereinafter set forth which shall, together with this paragraph, be collectively known and referred to as the National Security Clause.

ARTICLE I. *Definitions.* For purposes of this Clause the following definitions will apply:

(a) The term "premises" means the property transferred by this instrument.

(b) The term "assigned function" means the function for which the premises have been designated a part of the National Industrial Reserve or for which they may be hereafter redesignated under Article IX hereof.

(c) The term "production equipment" means all property other than property transferred by this instrument, at any time in or appurtenant to the premises which is necessary to their assigned function or to their current operations.

(d) The term "facilities" means the sum total of the premises and the production equipment.

ART. II. *Maintenance.* The Grantee hereby covenants and agrees that it will maintain the facilities in such a manner that they can be placed, within a period of 120 days, in a condition adequate to perform the assigned function of the premises.

In addition, the Grantee covenants and agrees,

(a) That it will maintain in accordance with sound practice in the industry, normal wear and tear excepted, that part of the facilities necessary for the assigned function of the premises which is actively being used in its current operations;

(b) That it will not make any alterations to the facilities which would impair performance of the assigned function of the premises, unless each such alteration can be restored in a period of 60 days or less and the sum total thereof restored in 120 days or less; and

(c) That it will not dispose of any production equipment, or any machinery and equipment transferred as a part of the premises by this instrument, the disposal of which would impair performance of the assigned function of the premises, unless the items so disposed of are immediately replaced with equivalent items.

Provided, however, That the provisions of this Article shall not apply to timber structures and their appurtenances for more than 15 years from the date hereof, or to machinery and equipment for more than 10 years from the date hereof; and provided further, that nothing herein contained shall prevent the Grantee from relocating any machinery or equipment within the premises for the purpose of improving operating efficiency or increasing productive capacity so long as the standards of care set forth above are continually observed.

ART. III. *Defaults*—(a) *Inspections.* The Grantee and the Government mutually covenant and agree that the latter may, after reasonable prior written notice to the Grantee, inspect the facilities for the purpose of determining whether the Grantee is in default on its obligations under this Clause.

(b) *Determinations of default.* If, as a result of such inspections, the Government adjudges the Grantee in default, it shall furnish the latter a written statement setting forth in detail the grounds on which the allegations are based, following which the Grantee shall have thirty days to submit evidence to the contrary. If in the light of the evidence so presented, the Government still holds that the Grantee is in default, it shall then advise the latter of the specific defaults to be corrected and the periods of time in which each correction must be completed, such periods to be as reasonable as possible.

(c) *Repairs by the Government.* In the event the Grantee fails to correct its defaults in the times stated, the Government shall then have the right to enter the premises for the purpose of correcting the defaults; and the Grantee, or its sureties, will reimburse the Government for all costs incurred by the Government in making such corrections. The Government, or any contractor employed by the Government for the purpose, shall have such right of access to the premises or any part thereof as may be necessary to permit such repairs or replacements.

ART. IV. *Government utilization* — (a) *Negotiation of contract.* The Grantee and the Government mutually covenant and agree that, whenever the Government considers the productive capacity of the facilities necessary for national security purposes, they will jointly undertake to negotiate a contract for the Grantee to furnish from the facilities the materials or services for which the premises are designated a part of the National Industrial Reserve.

(b) *Repossession.* The Grantee hereby covenants and agrees that, in the event the Government determines such a contract is not feasible, or that the Grantee is not qualified to furnish the materials or services required, or that a mutually satisfactory contract cannot be negotiated, the Grantee will turn over to the Government full possession of the premises together with all structures, improvements, easements, rights-of-way, and other interests appurtenant thereto (including all rights-of-way over and across other property of the Grantee necessary or convenient to the operation or use of the facilities) for such time as the Government deems necessary for national security purposes. The Grantee further agrees that it will lease to the Government, upon the latter's request and for a period co-extensive with the Government's repossession of the premises, any or all of the production equipment owned or controlled by the Grantee. The Government's rights to such possession and usage, together with its right to lease properties of the Grantee hereunder, shall vest on the date set by it in written notice to the Grantee, which date shall be not less than 15 days from the date of notice thereof, and shall expire on the termination date of this National Security Clause as provided for in Article XI below.

(c) *Withdrawal by the Grantee.* The Grantee hereby covenants and agrees that, upon the date set for transfer of the premises to the Government, it will immediately undertake to restore such alterations made by it and to remove such improvements, fixtures, machinery and other equipment installed by it as the Government may direct, such undertakings to be completed in the shortest possible time, but in no event to exceed 120 days from the date of repossession unless otherwise agreed upon between the Grantee and the Government. Thereafter, the Grantee shall have no further right to enter the premises during the period of Government possession except with the prior consent of the latter. During any period of Government possession, the premises may be used, occupied, or operated for or on behalf of the Government by any government department, agency, agent, or by any tenant, contractor, or subcontractor of the Government.

ART. V. *Compensation.* The Government hereby covenants and agrees that, upon any repossession under IV (b) above, it will pay the Grantee:

(a) *At the time of repossession.* (i) Fair and reasonable compensation for all losses, not including loss of profits, incurred by the Grantee or its assignees in respect of work in process in the premises which cannot be completed because of repossession by the Government.

(ii) Fair and reasonable costs incurred by the Grantee or its assignees in complying with Article IV (c).

(b) *During each period of possession.* (i) Fair and reasonable compensation for the use of the premises as agreed on by the parties hereto at a rate not in excess of prevailing rental for similar properties.

(ii) Fair and reasonable compensation for the use of any production equipment as agreed on by the parties hereto at a rate not in excess of prevailing rental for similar properties.

(c) *Upon termination of each period of possession.* Fair and reasonable costs incident to reinstallation of machinery and equipment removed from the premises and restoration of the premises to their condition on the date of repossession by the Government, reasonable depreciation excepted.

Any failure of the parties to reach agreement as to what amounts are fair and reasonable under this Article shall be deemed a dispute of fact within the meaning of Article XIII hereof.

ART. VI. *Insurance.* The Grantee hereby covenants and agrees that the proceeds of any insurance which is required of the Grantee by the terms of this instrument, or by any other agreement between it and the Government, to be placed on the premises or any part thereof will be applied, upon damage to or destruction of the premises by fire or other insurable casualty, to a restoration of the property, unless the Grantee is expressly released from such obligation by the Government.

ART. VII. *Subsequent Transfers.* The Grantee hereby covenants and agrees not to sell, lease, mortgage, or otherwise encumber the facilities without expressly making such sale, lease, mortgage, or encumbrance subject to the provisions of this National Security Clause for the remainder of its term.

ART. VIII. *Parties.* The Grantee and the Government mutually agree that the latter, in exercising its rights and carrying out its obligations under this National Security Clause, shall act through the Secretary of Defense or such departments, agencies, or individuals as he may designate, which may include, without limitation, the Assistant Secretaries of Defense (S and L) and (P and I), Board, the Departments of the Army, Navy, or Air Force, or the General Services Administration. References in this National Security Clause to the Government shall be deemed to refer as appropriate to the Secretary of Defense or such departments, agencies, or individuals as he may designate.

ART. IX. *Redesignation of purpose and use of premises.* The Government hereby covenants and agrees that, upon a petition by the Grantee for a change in the assigned function of the premises, it will re-evaluate the defense potential of the premises, both for the purposes for which they are designated for inclusion in the National Industrial Reserve and those for which it is requested they be redesignated, and will, if it deems the interests of national security are best served thereby, and upon tender by the Grantee of whatever consideration may be requested, change their designation to that requested by the Grantee. Conversely, the Government may, on its own initiative, recommend a redesignation to the Grantee which, if acceptable to the latter, shall be put into effect. Redesignations under this paragraph may be made only by written instrument and may not be requested by the Grantee more often than once in 6 months.

ART. X. *Modification or amendment of the National Security Clause.* The Government hereby covenants and agrees that, upon a petition by the Grantee for a reconsideration of the particular applicability of any of the terms, conditions, reservations or restrictions of the National Security Clause, the Government will, if it deems the interests of national security are best served thereby, modify or amend the Clause to the degree it sees fit upon tender by the Grantee of whatever consideration may be requested. Conversely, the Government may, on its own initiative, recommend modifications or amendments to the Grantee, which, if acceptable to the latter, shall be put into effect.

ART. XI. *Termination or revocation of the National Security Clause.* The Government and the Grantee mutually covenant and agree that their respective obligations under this National Security Clause, except those of the Grantee to reimburse the Government under Article III, or of the Government to furnish compensation under Article V, and except as may be otherwise specified herein, shall terminate 20 years following the date of this instrument or, in the event the Government is in possession at that time in accordance with Article IV (b), upon release of possession by the Government to the Grantee: *Provided, however,* That the Government, at its own election, or upon a petition by the Grantee, may reconsider the necessity for continuing all or any part of the Clause in effect and shall, in the event it determines such necessity no longer exists, and upon tender by the Grantee or whatever consideration may be requested, revoke the Clause, in whole or in part, by executing and delivering to the Grantee a release, quitclaim deed, or whatever instrument is necessary to remove the encumbrance of the Clause, or of a part thereof, from the facilities.

ART. XII. *Covenants.* It is the intention of both the Grantee and the Government that these covenants shall run with the land and bind subsequent purchasers of the premises hereby conveyed: *Provided, however,* That the Grantee shall not be liable for any violation of said covenants by subsequent owners of the premises.

ART. XIII. *Disputes.* Disputes on questions of fact which cannot be resolved by agreement of the parties shall be decided by the Secretary of Defense or the instrumentality duly and expressly designated by him, whose decision shall be final and conclusive. In connection with any proceeding under this Article, the Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its own case. Pending final decision of a dispute hereunder, the Grantee shall proceed diligently with the performance of its obligations under the Clause.

ART. XIV. *Recordation.* The Grantee shall forthwith cause this instrument to be duly recorded and shall furnish satisfactory evidence of such to the Government.

ART. XV. *Saving provision.* The Grantee and the Government mutually covenant and agree that nothing in this Clause shall be construed as affecting obligations of the Grantee under any other provisions of this instrument, except that, in any cases of inconsistency or ambiguity, the provisions of this National Security Clause shall, to the extent that they impose greater obligations on the Grantee, be deemed controlling.

§ 266.453–2 National Security Clause for leases of real property.

NATIONAL SECURITY CLAUSE

Whereas, the Secretary of Defense pursuant to section 4 (1) of the National Industrial Reserve Act of 1948 (Pub. Law 883, 80th

Cong.) has designated the premises leased hereunder a part of the National Industrial Reserve for the production of [insert designation of end items or basic material as the case may be] at an annual capacity of [insert quantity] and, whereas, pursuant to section 4 (4) of that act, it has authorized their disposal subject to a National Security clause formulated in accordance with that act; now therefore, in consideration of their respective obligations under this instrument, the parties hereto, for themselves, their heirs, successors, and assigns, do hereby enter into the terms, covenants, and conditions hereinafter set forth which shall, together with this paragraph, be collectively known and referred to as the National Security Clause.

ARTICLE I. *Definitions.* For purposes of this Clause the following definitions will apply:

(a) The term "premises" means the property leased by this instrument.

(b) The term "assigned function" means the function for which the premises have been designated a part of the National Industrial Reserve or for which they may be hereafter redesignated under Article VIII hereof.

(c) The term "production equipment" means all property, other than property leased by this instrument, at any time in or appurtenant to the premises which is necessary to their assigned function or to their current operations.

(d) The term "facilities" means the sum total of the premises and the production equipment.

ART. II. *Maintenance.* The Lessee hereby covenants and agrees that it will maintain the facilities in such a manner that they can be placed, within a period of 120 days, in a condition adequate to perform the assigned function of the premises.

In addition, the Lessee covenants and agrees,

(a) That it will maintain in accordance with sound practice in the industry, normal wear and tear excepted, that part of the facilities necessary for the assigned function of the premises which is actively being used in its current operations;

(b) That it will not make any alterations to the facilities which would impair performance of the assigned function of the premises, unless each such alteration can be restored in a period of 60 days or less and the sum total thereof restored in 120 days or less; and

(c) That it will not dispose of any of its own production equipment, the disposal of which would impair performance of the assigned function of the premises, unless the items so disposed of are immediately replaced with equivalent items.

Provided, however, That the provisions of this Article shall not apply to timber structures and their appurtenances for more than 15 years from the date hereof, or to machinery and equipment for more than 10 years from the date hereof: *And provided further,* That nothing herein contained shall prevent the Lessee from relocating any machinery or equipment within the premises for the purpose of improving operating efficiency or increasing productive capacity so long as the standards of care set forth above are continually observed.

ART. III. *Defaults*—(a) *Inspections.* The Lessee and the Government mutually covenant and agree that the latter may, after reasonable prior written notice to the Lessee, inspect the facilities for the purpose of determining whether the Lessee is in default on its obligations under this Clause.

(b) *Determinations of default.* If, as a result of such inspections, the Government adjudges the Lessee in default, it shall furnish the latter a written statement setting forth in detail the grounds on which the allegations are based, following which the Lessee shall have thirty days to submit evidence to the contrary. If in the light of the evidence so presented, the Government still holds that the Lessee is in default, it shall then advise the latter of the specific defaults to be corrected and the periods of time in which each correction must be completed, such periods to be as reasonable as possible.

(c) *Repairs by the Government.* In the event the Lessee fails to correct its defaults in the time stated, the Government shall then have the right to enter the premises for the purpose of correcting the defaults; and the Lessee, or its sureties, will reimburse the Government for all costs incurred by the Government in making such corrections. The Government, or any contractor employed by the Government for the purpose, shall have such right of access to the premises or any part thereof as may be necessary to permit such repairs or replacements. Where the defaults are such that they jeopardize the Government's interest in the facilities, the Government may take and maintain full possession thereof, without terminating the Lessee's interest or estate therein, for the period necessary to remedy such defaults and until reimbursement therefor has been made by the Lessee.

ART. IV. *Government utilization*—(a) *Negotiation of Contract.* The Lessee and the Government mutually covenant and agree that, whenever the Government considers the productive capacity of the facilities necessary for national security purposes, they will jointly undertake to negotiate a contract for the Lessee to furnish from the facilities the materials or services for which the premises are designated a part of the National Industrial Reserve.

(b) *Repossession.* The Lessee hereby covenants and agrees that, in the event the Government determines such a contract is not feasible, or that the Lessee is not qualified to furnish the materials or services required, or that a mutually satisfactory contract cannot be negotiated, the Lessee will turn over to the Government full possession of the premises together with all structures, improvements, easements, rights-of-way, and other interests appurtenant thereto (including all rights-of-way over and across other property of the Lessee necessary or convenient to the operation or use of the facilities) for such time as the Government deems necessary for national security purposes, on the condition, however, that the Lessee's obligations to pay rent for the premises shall be suspended for the period of Government possession. The Lessee further agrees that it will lease to the Government, upon the latter's request and for a period co-extensive with the Government's repossession of the premises, any or all of the production equipment owned or controlled by the Lessee. The Government's rights to such possession and usage, together with its right to lease properties of the Lessee hereunder, shall vest on the date set by it in written notice to the Lessee, which date shall be not less than 15 days from the date of notice thereof, and shall expire on the termination date of this National Security Clause as provided for in Article X below.

(c) *Withdrawal by the Lessee.* The Lessee hereby covenants and agrees that, upon the date set for transfer of the premises to the Government, it will immediately undertake to restore such alterations made by it and to remove such improvements, fixtures, machinery and other equipment installed by it as the Government may direct, such undertakings to be completed in the shortest possible time, but in no event to exceed 120 days from the date of repossession unless otherwise agreed upon between the Lessee and the Government. Thereafter, the Lessee shall have no further right to enter the premises during the period of Government possession except with the prior consent of the latter. During any period of Government possession, the premises may be used, occupied, or operated for or on behalf of the Government by any Government department, agency, agent, or by any tenant, contractor, or subcontractor of the Government.

ART. V. *Compensation.* The Government hereby covenants and agrees that, upon any repossession under IV (b) above, it will pay the Lessee:

(a) At the time of repossession. (1) Fair and reasonable compensation for all losses, not including loss of profits, incurred by the Lessee or its assignees, in respect of work in process in the premises which could have been completed prior to normal expiration of the lease but which cannot be completed because of repossession by the Government.

(ii) Fair and reasonable costs incurred by the Lessee, or its assignees, in complying with Article IV (c), less a reasonable set-off for those that would ordinarily be incurred on normal expiration of the lease. If, however, the period of Government possession expires prior to the expiration of the lease, and the Lessee, or its assignees, resumes possession for the balance of the term, the Government will compensate the Lessee for the full amount of any set-off previously deducted.

(b) During each period of possession, fair and reasonable compensation for the use of any production equipment as agreed on by the parties hereto at a rate not in excess of prevailing rental for similar properties.

(c) Upon termination of each period of possession, fair and reasonable costs incident to reinstallation of machinery and equipment removed from the premises and restoration of the premises to their condition on the date of repossession by the Government, reasonable depreciation excepted.

Any failure of the parties to reach agreement as to what amounts are fair and reasonable under this Article shall be deemed a dispute of fact within the meaning of Article XIII hereof.

ART. VI. *Subsequent transfers.* The Lessee hereby covenants and agrees not to sub-lease, assign, mortgage, pledge, or otherwise encumber the facilities without the prior written consent of the Government and without expressly making such sub-lease, assignment, mortgage, pledge, or encumbrance subject to the provisions of this National Security Clause for the remainder of its term.

ART. VII. *Parties.* The Lessee and the Government mutually agree that the latter, in exercising its rights and carrying out its obligations under this National Security Clause, shall act through the Secretary of Defense or such departments, agencies, or individuals as he may designate, which may include, without limitation, the Assistant Secretaries of Defense (S and L) and (P and I), the Departments of the Army, Navy, or Air Force, or the General Services Administration. References in this National Security Clause to the Government shall be deemed to refer as appropriate to the Secretary of Defense or such departments, agencies, or individuals as he may designate.

ART. VIII. *Redesignation of purpose and use of premises.* The Government hereby covenants and agrees that, upon a petition by the Lessee for a change in the assigned function of the premises, it will re-evaluate the defense potential of the premises, both for the purposes for which they are designated for inclusion in the National Industrial Reserve and those for which it is requested they be redesignated, and will, if it deems the interests of national security are best served thereby, and upon tender by the Lessee of whatever consideration may be requested, change their designation to that requested by the Lessee. Conversely, the Government may, on its own initiative, recommend a redesignation to the Lessee which, if acceptable to the latter, shall be put into effect. Redesignations under this paragraph may be made only by written instrument and may not be requested by the lessee more often than once in 6 months.

ART. IX. *Modification or amendment of the National Security Clause.* The Government hereby covenants and agrees that, upon a petition by the Lessee for a reconsideration of the particular applicability of any of the terms, conditions, reservations, or restrictions of the National Security Clause, the Government will, if it deems the interests of national security are best served thereby, modify or amend the Clause to the degree it sees fit upon tender by the Lessee of whatever consideration may be requested. Conversely, the Government may, on its own initiative, recommend modifications or amendments to the Lessee which, if acceptable to the latter, shall be put into effect.

ART. X. *Termination or revocation of the National Security Clause.* The Government and the Lessee mutually covenant and agree that their respective obligations under this National Security Clause, except those of the Lessee to reimburse the Government under Article III, or of the Government to furnish compensation under Article V, and except as may be otherwise specified herein, shall terminate upon the normal expiration of the lease or 20 years following the date of this instrument, whichever is sooner: *Provided however,* That in the event the Government is in possession at that time in accordance with Article IV (b), such termination shall occur upon release of possession by the Government to the Lessee; and provided further that the Government, at its own election, or upon a petition by the Lessee, may reconsider the necessity for continuing all or any part of the Clause in effect and shall, in the event it determines such necessity no longer exists, and upon tender by the Lessee of whatever consideration may be requested, revoke the Clause, in whole or in part, by executing and delivering to the Lessee a release or whatever instrument is necessary to remove the encumbrance of the Clause, or of a part thereof, from the facilities.

ART. XI. *Disputes.* Disputes on questions of fact which cannot be resolved by agreement of the parties shall be decided by the Secretary of Defense or the instrumentality duly and expressly designated by him, whose decision shall be final and conclusive. In connection with any proceeding under this Article, the Lessee shall be afforded an opportunity to be heard and to offer evidence in support of its own case. Pending final decision of a dispute hereunder, the Lessee shall proceed diligently with the performance of its obligations under the Clause.

ART. XII. *Recordation.* The Lessee shall forthwith cause this instrument to be duly recorded and shall furnish satisfactory evidence of such to the Government.

ART. XIII. *Saving provision.* The Lessee and the Government mutually covenant and agree that nothing in this Clause shall be construed as affecting obligations of the Lessee under any other provisions of this instrument, except that, in any cases of inconsistency or ambiguity, the provisions of this National Security Clause shall, to the extent that they impose greater obligations on the Lessee, be deemed controlling.

§ 266.453–3 National Security Clause for sales of personal property.

NATIONAL SECURITY CLAUSE

Whereas, the Secretary of Defense pursuant to section 4 (1) of the National Industrial Reserve Act of 1948 (Pub. Law 883, 80th Cong.) has designated the properties hereby transferred a part of the National Industrial Reserve for the production of [insert designation of end item or basic material as the case may be] at an annual capacity of [insert quantity] and, whereas, pursuant to section 4 (4) of that Act, it has authorized their disposal subject to a National Security Clause formulated in accordance with that act; now therefore, in consideration of their respective obligations under this instrument, the parties hereto, for themselves, their heirs, successors, and assigns do hereby enter into the terms, covenants, and conditions hereinafter set forth which shall, together with this paragraph, be collectively known and referred to as the National Security Clause.

ARTICLE I. *Definitions.* For purposes of this Clause the following definitions will apply:

(a) The term "properties" as used herein means those properties (personal property) transferred by this instrument or any other properties subsequently substituted therefor by agreement of the parties and expressly made subject, by a separate written instrument, to the terms and conditions of this National Security Clause.

(b) The term "assigned function" means the function for which the properties have been designated a part of the National Industrial Reserve or for which they may be hereafter redesignated under Article IX hereof.

ART. II. *Maintenance.* The Purchaser hereby covenants and agrees that it will maintain the properties in such a manner that they can be placed, within a period of 120 days, in a condition adequate to perform their assigned function.

In addition, the Purchaser covenants and agrees,

(a) That it will maintain in accordance with sound practice in the industry, normal wear and tear excepted, such part of the properties as is necessary for their assigned function which is actively being used in its current operations; and

(b) That it will not make any alterations to the properties which would impair performance of their assigned function unless each such alteration can be restored in a period of 60 days or less and the sum total thereof restored in 120 days or less.

ART. III. *Defaults*—(a) *Inspections.* The Purchaser and the Government mutually covenant and agree that the latter may, after reasonable prior written notice to the Purchaser, inspect the properties to determine whether the Purchaser is in default on its obligations under this Clause.

(b) *Determination of default.* If, as a result of such inspections, the Government adjudges the Purchaser in default, it shall furnish a written statement to the Purchaser setting forth in detail the grounds on which it bases its allegations, following which the Purchaser shall have 30 days to submit evidence to the contrary. If in the light of the evidence so presented, the Government still holds that the Purchaser is in default, it shall then advise the latter of the specific defaults to be corrected and the periods of time in which each correction must be completed, such periods to be as reasonable as possible.

(c) *Repairs by the Government.* In the event the Purchaser fails to correct its defaults in the times stated, the Government shall then have the right to correct such defaults; and the Purchaser, or its sureties, shall reimburse the Government for all costs incurred by the Government in making such corrections. The Government, or any contractor employed by the Government for the purpose, shall have such right of access to the properties as may be necessary to permit making such repairs.

ART. IV. *Government utilization*—(a) *Negotiation of Contract.* The Purchaser and the Government mutually covenant and agree that, whenever the Government considers the productive capacity of the properties necessary for national security purposes, they will jointly undertake to negotiate a contract for the Purchaser to use the properties in furnishing the materials or services for which the properties are designated a part of the National Industrial Reserve.

(b) *Repossession.* The Purchaser hereby covenants and agrees that, in the event the Government determines such a contract is not feasible, or that the Purchaser is not qualified to furnish the materials or services required, or that a mutually satisfactory contract cannot be negotiated, the Purchaser will turn over to the Government full possession of the properties and all rights of use incident thereto (including a right of entry for removal of such properties) for such time as the latter deems necessary for national security purposes. The Government's rights to such possession and usage shall vest on the date set by it in written notice to the Purchaser, which date shall be not less than 15 days from the date of notice thereof, and shall expire on the termination date of this National Security Clause as provided for in Article XI below.

(c) *Relinquishment by the purchaser.* Upon repossession by the Government, the Purchaser shall have no further right to use the properties during the period of Government possession except with the prior consent of the latter. During any such period of Government possession the properties may be used or operated for or on behalf of the Government by any government department, agency, agent, or by any tenant, contractor, or subcontractor of the Government.

ART. V. *Compensation.* The Government hereby covenants and agrees that, upon any repossession under IV (b) above, it will pay the Purchaser:

(a) At the time of repossession, fair compensation for all losses, not including loss of profits, incurred by the Purchaser or its assignees in respect of work in process which cannot be completed because of repossession by the Government.

(b) During each period of possession, fair and reasonable compensation for the use of the properties as agreed upon by the parties hereto at a rate not in excess of prevailing rental for similar property.

(c) Upon termination of each period of possession, fair and reasonable costs incident to restoration of the properties to their condition on the date of repossession by the Government, reasonable depreciation excepted, and fair and reasonable costs for their reinstallation, if required.

Any failure of the parties to reach agreement as to what amounts are fair and reasonable under this Article shall be deemed a dispute of fact within the meaning of Article XII hereof.

ART. VI. *Insurance.* The Purchaser hereby covenants and agrees that the proceeds of any insurance which is required of the Purchaser by the terms of this instrument, or by any other agreement between it and the Government, to be placed on the properties hereby conveyed or any part thereof will be applied, upon damage to or destruction of the properties by fire or other insurable casualty, to a restoration thereof, unless the Purchaser is expressly released from such obligation by the Government.

ART. VII. *Subsequent transfers.* The Purchaser hereby covenants and agrees not to sell, lease, mortgage, pledge, or otherwise encumber the properties without expressly making such sale, lease, mortgage, pledge, or encumbrance subject to the provisions of this National Security Clause for the remainder of its term, with the right to enforce such provisions expressly stated as vested in the Government.

ART. VIII. *Parties.* The Purchaser and the Government mutually agree that the latter, in exercising its rights and carrying out its obligations under this National Security Clause shall act through the Secretary of Defense or such departments, agencies, or individuals as he may designate, which may include, without limitation, the Assistant Secretaries of Defense (S and L) and (P and I), the Departments of the Army, Navy, or Air Force, or the General Services Administration. References in this National Security Clause to the Government shall be deemed to refer as appropriate to the Secre-

tary of Defense or such departments, agencies, or individuals, as he may designate.

ART. IX. *Redesignation of purpose and use of properties.* The Government hereby covenants and agrees that, upon a petition by the Purchaser for a change in the assigned function of the properties, it will re-evaluate the defense potential of the properties, both for the purposes for which they are designated for inclusion in the National Industrial Reserve and those for which it is requested they be redesignated, and will, if it deems the interests of national security are best served thereby, and upon tender by the Purchaser of whatever consideration may be requested, change their designation to that requested by the Purchaser. Conversely, the Government may, on its own initiative, recommend a redesignation to the Purchaser which, if acceptable to the latter, shall be put into effect. Redesignations under this paragraph may be made by written instrument only and may not be requested by the Purchaser more often than once in 6 months.

ART. X. *Modification or amendment of the National Security Clause.* The Government hereby covenants and agrees that, upon a petition by the Purchaser for a reconsideration of the particular applicability of any of the terms, conditions, reservations or restrictions of the National Security Clause, the Government will, if it deems the interests of national security are best served thereby, modify or amend the Clause to the degree it sees fit upon tender by the Purchaser of whatever consideration may be requested. Conversely, the Government may, on its own initiative, recommend modifications or amendments to the Purchaser which, if acceptable to the latter, shall be put into effect.

ART. XI. *Termination or revocation of the National Security Clause.* The Government and the Purchaser mutually covenant and agree that their respective obligations under this National Security Clause, except those of the Purchaser to reimburse the Government under Article III, or of the Government to furnish compensation under Article V, and except as may be otherwise specified herein, shall terminate 10 years following the date of this instrument or, in the event the Government is in possession at that time in accordance with Article IV (b), upon release of possession by the Government to the Grantee: *Provided, however,* That the Government, at its own election, or upon a petition by the Purchaser, may reconsider the necessity for continuing all or any part of the Clause in effect and shall, in the event it determines such necessity no longer exists, and upon tender by the Purchaser of whatever consideration may be requested, revoke the Clause, in whole or in part, by executing and delivering to the Purchaser a release or whatever instrument is necessary to remove the encumbrance of the Clause, or of a part thereof, from the properties.

ART. XII. *Disputes.* Disputes on questions of fact which cannot be resolved by agreement of the parties shall be decided by the Secretary of Defense or the instrumentality duly and expressly designated by him, whose decision shall be final and conclusive. In connection with any proceeding under this Article, the Purchaser shall be afforded an opportunity to be heard and to offer evidence in support of its own case. Pending final decision of a dispute hereunder, the Purchaser shall proceed diligently with the performance of its obligations under the Clause.

ART. XIII. *Recordation.* The Purchaser shall forthwith cause this instrument to be duly recorded and shall furnish satisfactory evidence of such to the Government.

ART. XIV. *Saving provision.* The Purchaser and the Government mutually convenant and agree that nothing in this Clause shall be contrued as affecting obligations of the Purchaser under any other provisions of this instrument, except that, in any cases of inconsistency or ambiguity, the provisions of this National Security Clause shall, to the extent that they impose any greater obligations on the Purchaser, be deemed controlling.

§ 266.451 Modifications in National Security Clause.

The National Security Clause prescribed in this subpart may be modified or deviated from and specific provisions may be omitted for purposes of specific properties and transactions provided such modifications, deviations, or omissions or substance are approved by the Secretary of Defense before becoming binding upon the Government.

DISPOSALS OF PROPERTY SUBJECT TO THE NATIONAL SECURITY CLAUSE

§ 266.500 Scope of §§ 266.500 to 266.506.

Sections 251.500 to 251.506 deal with the procedures for disposing of property in the National Industrial Reserve to private individuals, firms, corporations, or other persons, subject to the National Security Clause.

§ 266.501 Specification of National Security Clause.

The Secretary of Defense may authorize disposition of specific properties, and will specify the National Security Clause and will notify the head of the disposal agency having control of each such property. If not otherwise specified, the National Security Clause formulated in this part shall be considered to be applicable.

§ 266.502 Modification of National Security Clause.

In the event that any agency charged with the disposal of excess property in the National Industrial Reserve is unable to dispose of such property because the terms of the National Security Clause imposed upon it are unacceptable without modifications and substance, the head of such agency shall promptly notify the Secretary of Defense thereof, indicating the modifications in the disposal of the property. Upon receipt of such notification, the Secretary of Defense may, in his discretion, direct what, if any, modifications shall be made in the provisions of the National Security Clause applicable to the property, which modifications may, but need not, conform to the recommendations of the head of the disposal agency.

§ 266.503 Qualifications of transferees.

In addition to any other requirements, disposals of property in the National Industrial Reserve shall be made only upon proof, satisfactory to the head of the disposal agency having control of such property, of the financial responsibility and integrity of the transferee, and of his or its ability to operate the property and knowledge of the technical problems involved.

§ 266.504 Negotiation of terms of disposition.

§ 266.504–1 Responsibility of head of disposal agency.

Except as provided in § 266.504–2, negotiations for the sale, lease, or other disposition of a property in the National Industrial Reserve shall be the responsibility of the head of the disposal agency having control of the property. The terms of such disposition shall in all cases include the provisions of the National Security Clause as specified by the Secretary of Defense for the property, with such modifications as may be approved, but in other respects may be upon such terms and conditions as shall be mutually agreed upon by the head of the disposal agency and the transferee.

§ 266.504–2 Negotiations by General Services Administration.

In the case of negotiations for the sale, lease or other disposition of a property in the National Industrial Reserve by the General Services Administration, terms and conditions negotiated by the General Services Administration, shall not become effective until they have either been approved by the Secretary of Defense or the Secretary of Defense has indicated that his approval of the particular transaction or type of transaction is not required.

§ 266.505 Disposal procedures.

Subject to the regulations in this subchapter and to the extent not inconsistent with it, disposals of property in the National Industrial Reserve subject to the National Security Clause shall be governed by the rules, regulations, and procedures established by the disposal agency having control of such property.

§ 266.506 Documentation.

Each disposal of property shall be documented in accordance with the rules, regulations and procedures of the disposal agency having control of the property, and, in addition, the Secretary of Defense shall be furnished with at least three conformed copies of all documents of transfer including any letters of intent agreements and other documents containing the commitments of the parties to enter into the transaction.

TRANSFERS OF PROPERTY TO GENERAL SERVICES ADMINISTRATION

§ 266.550 Scope of §§ 266.550 to 266.554.

Sections 266.550 to 266.554 deal with the procedures for transfers of property to the General Services Administration to be held by it as a part of the National Industrial Reserve. Such property will ordinarily come to the General Services Administration as a result of the failure of other disposal agencies to dispose of it subject to the National Security Clause or authorized modifications thereof. It may be held by General Services Administration as custodian for an indefinite period of time, or it may be transferred or disposed of by the General Services Administration in accordance with directives of the Secretary of Defense.

§ 266.551 Certification of unsalability and transfer directive.

§ 266.551–1 Determination by head of disposal agency.

Upon a determination by the head of a disposal agency that a particular excess industrial property in the National Industrial Reserve which is under its control cannot be disposed of subject to the National Security Clause, or a National Security Clause as modified in accordance with the provisions of § 266.502, after every practicable effort has been made, he shall give written notice to the Secretary of Defense certifying that such property is not salable subject to a National Security Clause.

§ 266.551–2 Disposition or transfer by Secretary of Defense directive.

Upon receipt of a certification that a property is unsalable under the provisions of a National Security Clause, the Secretary of Defense may, in his discretion: (a) Direct the disposition of such plant in accordance with the provisions of §§ 266.600 to 266.606 or; (b) direct the certifying agency to transfer such property to the General Services Administration in accordance with the provisions of this subpart.

§ 266.551–3 Limitation on necessity for modification of conditions.

It shall not be necessary, as a condition precedent to certification, transfer or disposal under §§ 266.551–1 and 266.551–2, to seek to dispose of any property under a modified National Security Clause, or to attempt to dispose of any property for a use other than the use for which it was designated for the National Industrial Reserve.

§ 266.552 Transfer of possession, accountability and responsibility.

Transfer of possession, accountability and responsibility pursuant to directive of the Secretary of Defense in accordance with the provisions of § 266.551–2 shall be in accordance with such procedures as may be prescribed by the General Services Administration. Unless otherwise prescribed by the Secretary of Defense, transfers shall include the entire interest of the Government at the location of the property being transferred including the assignment of responsibility for administration of all agreements relating to such property; other than agreements secured by mortgage, lien, or other interests; the General Services Administration to assume the obligation of all such agreements as of the date of transfer. All such transfers shall be without reimbursement or transfer of funds and the property transferred shall continue to be held as a part of the National Industrial Reserve unless other instructions shall be received from the Secretary of Defense.

§ 266.553 Documentation.

Each transfer of property to the General Services Administration shall be documented according to procedures specified by the General Services Administration, and the Secretary of Defense shall be furnished with at least three conformed copies of all documents of transfer.

§ 266.554 Transfer of machine tools and industrial manufacturing equipment.

Machine tools and industrial manufacturing equipment which may be designated as a part of the National Industrial Reserve shall not be offered for disposal except as part of a plant which is to be disposed of, but shall be transferred to the General Services Administration in accordance with the provisions of this subpart. Transfers of such machine tools and equipment shall be accomplished without reimbursement or transfer of funds.

Transfers of Property for Use of, or Operation by, Other Governmental Departments and Agencies

§ 266.600 Scope of §§ 266.600 to 266.606.

Sections 266.600 to 266.606 deal with the procedures for transfers of property in the National Industrial Reserve in the custody of the General Services Administration to other governmental departments and agencies, to be used or operated by such other departments or agencies while the property in question continues to constitute a part of the National Industrial Reserve.

§ 266.601 Request for transfer.

The head of any governmental department or agency may present a written request to the Secretary of Defense for the transfer to his department or agency of any property in the National Industrial Reserve which is being held by the General Services Administration for the use of, or operation by, the department or agency on behalf of which the request is made. Such request shall be in writing, and shall set forth in detail the uses that are intended to be made of the property, the standard of maintenance that is contemplated, the effect of such use or operation upon the availability of the property for the purpose of national defense, and other contemplated terms and conditions of the proposed transfer. The department or agency so making a request shall furnish the Secretary of Defense with such additional information relating to the proposed use and operation of the property as the Secretary of Defense may request.

§ 266.602 Terms of transfer.

The Secretary of Defense may deny any such request, or may offer to transfer the property requested upon terms other than those contained in the request.

§ 266.603 Direction to transfer.

The Secretary of Defense may, in his discretion and without request, direct that property in the National Industrial Reserve under the control of the General Services Administration be transferred to any one of the military departments of the Department of Defense or any other department or agency, with his consent for the use of, or operation by, such department or agency, without reimbursement.

§ 266.604 Accountability and responsibility.

Upon completion of the transfer of the property, in accordance with the terms of transfer prescribed by the Secretary of Defense, and pursuant to the regulations and procedures of the disposal agency having control of the property prior to the transfer, the department or agency to which the property has been transferred shall be responsible for the proper maintenance of the property and for its availability for purposes of national defense, as prescribed by the Secretary of Defense in the terms of transfer.

§ 266.605 Inspection and reports.

While subject to the use of, or operation by, such other governmental department or agency, the property shall be available for the engineering surveys and inspections provided for in §§ 266.400 to 266.404–2, and such department or agency shall adhere to the maintenance requirements specified in said § 266.400 and shall make such reports to the Secretary of Defense from time to time concerning the property's condition and availability, together with accounts of its operation, as may be requested by the Secretary of Defense.

§ 266.606 Return of property.

Whenever such governmental department or agency has no further need for the use or operation of property transferred to it under this §§ 266.600 to 266.606 it shall promptly notify the Secretary of Defense. Upon receipt of such notice, the Secretary of Defense shall cause a review to be made of the justification for the retention of such property in the National Industrial Reserve, and if such retention is determined to be justified, the Secretary of Defense may (a) cause it to be transferred to another department or agency for its use in accordance with terms and conditions to be prescribed, or (b) direct it to be transferred to the General Services Administration to be held by it in the National Industrial Reserve.

Loan of Property in the National Industrial Reserve to Nonprofit Educational Institutions and Training Schools

§ 266.650 Scope of §§ 266.650 to 266.654.

Sections 266.650 to 266.654 deal with the rules and procedures governing loans of property in the National Industrial Reserve by the General Services Administration to nonprofit educational institutions and training schools, as provided in the act. Such loans will be limited to certain machine tools and industrial manufacturing and laboratory equipment under the control of the General Services Administration.

§ 266.651 Application for loan of property.

The head of any nonprofit educational institution or training school as defined in § 266.201–7 may make a written application to the General Services Administration for the loan of specific machine tools or industrial manufacturing equipment for the use of such institution or school in connection with a program of

instruction. The application shall specify in detail the property requested, the nature of the program, and the number, age, and qualifications of the persons expected to participate in the program.

§ 266.652 Investigation and report by General Services Administration.

Upon receipt of an application for a loan of property in the National Industrial Reserve the General Services Administration will cause an investigation to be made to determine (a) whether the applicant conforms to the definition contained in § 266.201–7, (b) the accuracy of the statements contained in the application, (c) the ability of the applicant properly to care for and maintain the property, (d) the importance of the property in question to the program of instruction, (e) the relative importance of the program as a means of training critically-needed skills, compared to the importance of preserving the productive capacity of the property for future use, and (f) such other facts as may be material. The results of such investigation will be reported by the General Services Administration to the Secretary of Defense together with its recommendation with respect to the granting or denying of the application.

§ 266.653 Action by Secretary of Defense, conditions of loan.

The Secretary of Defense may in his discretion authorize or refuse to authorize such loan. In the event that it is authorized, the loan of the property applied for will be upon terms (a) requiring the property to be fully cared for and maintained by the applicant according to such standards as the Secretary of Defense may prescribe, (b) requiring the property to be kept available for immediate return upon request to the General Services Administration or such other Governmental department or agency, or other person as the Secretary of Defense may designate, and (c) requiring the applicant to assume all costs of transportation, maintenance, and insurance of the property while subject to the loan, so that the loan will be without expense to the Government.

§ 266.654 Authorization to General Services Administration.

In the event that the Secretary of Defense approves the loan, the General Services Administration will be notified of such approval, and will be authorized to make the loan upon the conditions prescribed in § 266.653, and such other terms as the General Services Administration may prescribe.

DISPOSITION OF EXCESS INDUSTRIAL PROPERTY FREE OF NATIONAL SECURITY CLAUSE WHEN NO LONGER REQUIRED FOR NATIONAL INDUSTRIAL RESERVE

§ 266.700 Scope of §§ 266.700 to 266.701–2.

Sections 266.700 to 266.701–2 deal with procedures for disposition of property in the National Industrial Reserve when it is no longer needed for such reserve.

§ 266.701 Relinquishment or waiver of National Security Clause.

Whenever the Secretary of Defense shall determine that the retention of the productive capacity of an excess industrial property in the National Industrial Reserve (including a lesser part or interest than the entire property) is no longer essential to the national security, it will authorize the relinquishment or waiver of a part or all of the provisions of the National Security Clause applicable to such property.

§ 266.701–1 Property under control of disposal agency.

If the property is under the control of a disposal agency, the Secretary of Defense will notify the head of such disposal agency of the relinquishment or waiver of the National Security Clause, and the property shall thereafter be offered for disposition free from the provisions so relinquished or waived.

§ 266.701–2 Property under control of a transferee.

If the property has been disposed of to a transferee subject to a National Security Clause, the Secretary of Defense will relinquish or waive the National Security Clause.

PART 268—USE OF STANDARDIZATION DOCUMENTS ISSUED BY INDUSTRY GROUPS

Sec.
268.1 Purpose.
268.2 Authority.
268.3 Policy.
268.4 Definitions.
268.5 DoD participation and representation.
268.6 DoD control of DoD requirements.
268.7 Identification of approved industry documents.

AUTHORITY: §§ 268.1 to 268.7 issued under Chapter 145, Title 10, United States Code.

§ 268.1 Purpose.

This part prescribes a uniform policy for implementation of that portion of DoD Directive 4120.3 Defense Standardization Program, documents to assure the most economic employment of standardization resources.

§ 268.2 Authority.

The Defense Standardization Program is conducted under the authority of Chapter 145, Title 10, U.S.C. Responsibility for this program is assigned to the Assistant Secretary of Defense (Supply and Logistics) by DoD Directive 5126.1, (24 F.R. 6098). Administration of the Program is delegated to the Armed Forces Supply Support Center by DoD Directive 5154.14.

§ 268.3 Policy.

In furtherance of the Defense Standardization Program, it is the policy of the Department of Defense to make maximum utilization of industry effort expended in the development of standardization documents. Industry standardization documents shall be used whenever considered feasible by the cognizant technical activity in the fields of research, design, development, and acquisition of material. DoD activities are encouraged to make optimum use of the facilities of industry groups in the development of industry standardization documents having a present or potential DoD use. An industry document which has received that degree of DoD approval presently required for issuance of a coordinated Federal or military specification or standard shall be approved for use within the Department of Defense. An industry document, coordinated and approved by a military service in the same manner as that service coordinates and approves military specifications and standards for limited coordination status, shall have the equivalent status. Only complete industry standardization documents of a specified issue will be selected by DoD for either coordinated status or limited coordination status equivalent. The referencing of industry standardization documents in their entirety, or in part, in military and Federal specifications and standards is authorized.

§ 268.4 Definitions.

For purposes of this part, the following terms shall have the meanings described below:

(a) *Industry group.* A nongovernmental organization conducting professional standardization activities. (An individual or a concern organized for profit is not an industry group within the sense of this instruction.)

(b) *Industry document.* Any standardization document issued by an industry group, as herein defined, with the intent to establish common technical requirements (including requirements for a physical item, technical process, engineering practice, etc.)

§ 268.5 DoD participation and representation.

The following principles shall govern DoD participation and representation in industry groups:

(a) *Participation.* (1) Military services shall participate to the extent practicable in the work of industry groups to further the objectives of the Defense Standardization Program. Participation shall be consistent with DoD Directive 5500.2, "Policies Governing Participation of DoD Liaison Representatives in Activities of Technical Societies, Associations and Groups".

(2) Each assignee shall provide or arrange for active DoD participation in those industry group projects in which DoD has a real interest based upon a current or anticipated military requirement. An assignee shall insure that DoD participation so provided or arranged for represents the interests of all the services and is in fact a DoD representation.

(3) Each assignee will ascertain prior to providing or encouraging DoD participation, that the industry project will result in a timely document. If it is determined that the efforts of the in-

dustry group will not have a timely result, then DoD efforts should be directed toward drafting an appropriate military document.

(b) *Representation.* While adequate DoD representation in the work of industry groups is essential to the attainment of DoD standardization objectives, excessive DoD representation in terms of numbers of official DoD participants is to be discouraged. The number of persons officially representing DoD as participants in projects of an industry group shall be consistent with the importance of the project to DoD and shall be limited to that minimum needed for effective representation of DoD interests.

(c) *Coordination of DoD effort.* (1) Each assignee will avoid unnecessary duplication of effort in standardization projects, whether military or industry.

(2) It is the responsibility of an assignee to keep other interested DoD activities and the Armed Forces Supply Support Center informed of industry standardization action pertinent to the Defense Standardization Program.

(3) In partial fulfillment of this responsibility to coordinate DoD standardization effort, each assignee shall, within the area of its assignments, provide for establishment and maintenance of DoD representation on committees of industry groups for matters pertaining to standardization and the development of specifications and standards to the extent that common interest exists and actual benefit to DoD results. A copy of a list of liaison representation identifying the industry groups will be furnished the Standardization Division, AFSSC, semiannually on 30 December and 30 June.

§ 268.6 DoD control of DoD requirements.

Approval of an industry document for use in DoD procurement shall be granted only for a specified issue (see § 268.7(a)) which meets the requirements of the Department of Defense.

(a) *Approved industry documents having coordinated status.* An industry document which has received that degree of DoD approval precently required for issuance of a coordinated Federal or military specification or standard shall be approved for use within the Department of Defense. In order for an industry document to be approved for use, it must be subjected to the identical DoD administrative processes required for approval of a coordinated Federal or military specification or standard.

(1) *Existing industry documents.* With respect to existing industry documents, an assignee has the following standardization responsibilities within areas of its assignment:

(i) Select those having a potential for DoD use.

(ii) Establish projects for:

(*a*) Obtaining the requisite coordination within DoD on the documents selected;

(*b*) Obtaining such additional industry coordination as is necessary on these documents;

(*c*) Arranging for their final DoD approval; and

(*d*) Identifying them as approved industry documents in the index prescribed by § 268.7.

(2) *Proposed industry documents.* With respect to proposed industry documents, an assignee has the following standardization responsibilities within the area of its assignment:

(i) Maintain a continuing awareness of existing projects intended to result in an industry document.

(ii) Encourage industry groups to initiate new projects for documents which will satisfy a current or potential DoD requirement.

(iii) Insure active DoD participation (see § 268.5) in all projects in which DoD has a real interest based upon a current or anticipated DoD requirement.

(iv) Establish projects for:

(*a*) Obtaining formal coordination within the DoD on proposed industry documents resulting from these industry groups' projects;

(*b*) Submitting to the industry group concerned the official DoD comments on such a proposed document;

(*c*) Encouraging the industry group to make that circulation of the proposed industry document to industry which would be made were it a proposed DoD document;

(*d*) Ascertaining that the industry document finally promulgated is consistent with all essential DoD comments;

(*e*) Obtaining such additional industry coordination as is necessary;

(*f*) Arranging for final DoD approval; and

(*g*) Identifying the approved industry document in the index prescribed in § 268.7.

(b) *Approved industry documents having limited coordination status.* An industry document coordinated and approved by a military service in the same manner as that service coordinates and approves military specifications and standards for limited coordination status shall have the equivalent status.

(c) *Criteria for approval.* The primary criteria for determining whether an industry document will be approved for use by the Department of Defense are: The technical sufficiency of the document in terms of DoD requirements; the extent and degree to which an industry document is circulated for comment among, and is acceptable to, interested industry elements; and the assurance that sufficient copies of the document will be available to satisfy demands generated by DoD.

(1) When, in the judgment of the assignee, coordination of the industry document by the industry group has been effected to at least the minimum extent and degree required for a DoD-conducted industry coordination of a military specification or standard, the industry coordination process need not be repeated. If, however, the industry coordination by the industry group does not meet the foregoing coordination criterion, technical requirements of the document may be incorporated into a military document and processed within the military series, after securing the required industry coordination.

(2) An industry document will not be approved for either coordinated-status equivalent or limited coordinated-status equivalent unless it has first been ascertained that:

(i) Sufficient copies are available from the industry source to handle the total estimated DoD demands at no more than a nominal charge for each copy, and

(ii) If the document is copyrighted, that the Government has been granted a royalty-free license for reproduction for its own use and for future reproduction on the contingency that the industry source may cease to make sufficient copies available at some future date.

§ 268.7 Identification of approved industry documents.

Each industry document approved for use within the Department of Defense in accordance with the procedures herein prescribed shall be identified in a separate section of each existing departmental index entitled "Index of Military Specifications and Standards" and shall be bound integrally therewith. The departmental indexes are also referred to as "Military Indexes for Specifications and Standards (Vols. II, III, and IV)."

(a) *Identification data for industry documents.* A military series of numbers shall not be assigned to DoD-approved industry documents. The index will identify each such document by industry group, symbol, number, title, date of the most recent DoD-approved issue and Assignee Activity within DoD. (E.g., ASA C7.1–1953, 2d edition, Soft or Annealed Copper Wire, Specifications for.) Each listed industry document shall be identified in the index as either coordinated-status equivalent or limited coordinated-status equivalent. This identification of status will be in the same form as that now being used in the Index for identifying military specifications and standards as either coordinated or limited coordinated.

(b) *Identification of industry source.* Whenever the distribution requirements for an indexed industry document are to be met wholly or partially by the industry source, an appendix to the Index will list the name and mailing address of the industry distribution point for each indexed document except for any document generally available in technical or public libraries (e.g., Pharmacopoeia of the United States).

PART 271—CORRESPONDENTS ACCOMPANYING THE ARMED FORCES

Sec.

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AUTHORITY: §§ 271.1 to 271.26 issued under R.S. 161; 5 U.S.C. 22.

§ 271.1 General.

(a) *Purpose.* Sections 271.1 to 271.26 acquaint correspondents with their responsibilities while under the jurisdiction of the Armed Forces in area commands as designated by the Secretary of Defense and serve as a directive to Armed Forces personnel in their relationship with correspondents under jurisdiction of the Armed Forces.

(b) *Policy.* The policy of the Department of Defense is to give the public timely and, so far as it is compatible with national defense, complete information of Army, Navy, Air Force, Marine Corps, and Coast Guard activities and to afford opportunities to correspondents of recognized public information agencies to gather and transmit such news.

§ 271.2 Definitions.

For the purpose of simplification and understanding, certain terms used in this part are defined below:

(a) "Public information agencies" shall mean a press, radio, or pictorial organization regularly engaged in the collection and dissemination of news to the public, including press associations, news and pictorial feature services, newspapers, periodicals, radio and television broadcasting organizations, and newsreel companies.

(b) "Correspondents" shall mean journalists, press reporters, photographers, columnists, editors and publishers, radio and television reporters, commentators and cameramen, and newsreel and other documentary picture production personnel who are duly accredited to the Department of Defense and regularly engaged in the collection and dissemination of news to the public.

(c) "News material" shall mean all news material, whether of information or opinion and whether visual or auditory, for dissemination to the public.

(d) "Press traffic" shall mean news material transmitted in writing or by means of telecommunications (in form customarily employed by news media agencies in transmitting such news material before publication) to newspapers, news periodicals, and broadcasting organizations.

(e) "Official photographs" shall mean those stills made by military photographers or civilian photographers employed by the Department of Defense, as distinguished from photographs made by war correspondent photographers. Unclassified official and unclassified captured photographs will be made available to all interested news photo agencies and media when practicable.

(f) "Official motion pictures" shall be those motion pictures made by military photographers or civilian photographers employed by the Department of Defense, as distinguished from motion pictures made by war correspondent photographers. Unclassified official motion pictures as well as unclassified captured motion pictures will be made available to all interested theater newsreel and television news film companies and other media if practicable.

§ 271.3 Status and privileges.

All possible assistance within the limits dictated by military necessity will be given correspondents to assist them in performing efficiently and intelligently their work of keeping the public informed of the activities of the Armed Forces of the United States.

(a) Correspondents accompanying the Armed Forces of the United States are subject to the orders of the military commander of the unit to which attached. They are subject to military law in accordance with the Uniform Code of Military Justice, Article 2, (10), (11), and (12). They must wear the prescribed uniform and be prepared to identify themselves when called upon to do so by proper authority. They shall at all times observe the same military security regulations as service personnel, including censorship of personal correspondence.

(b) Correspondents are not, in general, entitled to the benefits provided by law for persons in the Armed Forces.

(c) In the event of capture by enemy forces, correspondents are entitled to treatment as prisoners of war, provided they are in possession of an identity card issued by the Department of Defense establishing their status. (Article 4, Geneva Convention Relative to the Treatment of Prisoners of War, of August 12, 1949.) (§ 271.7 (a) and (b).)

(d) Correspondents will not exercise command, will not be placed in a position of authority over military personnel, nor will they be armed. They will have the same obligations as military personnel in regard to personal conduct, the settlement of accounts, and compliance with standing orders.

(e) A correspondent becomes subject to military law, as indicated above, upon physically entering a theater of operation in an accredited status, or upon boarding Government transportation en route thereto.

(f) As far as facilities permit, correspondents will be treated as commissioned officers, with the assimilated rank of major or comparable grade, in such matters as messing, living accommodations, and transportation. They will be accorded the same privileges and have the same obligations as officers in the use of post exchanges, ship stores, clothing sales stores, and recreational facilities. Use of such facilities must be without cost to the Government.

(g) Correspondents may converse freely with Armed Forces personnel, unless such conversation interferes with the discharge of military duties. They are expected, however, to refrain from conversing with Armed Forces personnel at work or on guard, or from discussing or soliciting information known to be classified.

§ 271.4 Application.

Application for the accreditation of any individual correspondent will be submitted by the sponsoring employer to the Office of Public Information, Department of Defense, Washington 25, D.C.

§ 271.5 Limit on number.

The following considerations shall govern the number of correspondents accredited to any theater of operations:

(a) The number of correspondents accredited to a theater will be within quotas established by the theater commander after coordination with the military department concerned and the Department of Defense. Quotas will be determined by the size of the command and the availability of facilities and logistical support.

(b) When limitation of quotas is necessary, the Department of Defense will give preference in the consideration of application to agencies reaching broad segments of the American public and to selections which maintain a balanced representation of the various informational media.

§ 271.6 Agreement.

Before final acceptance, a correspondent will be required to sign an agreement in quadruplicate as follows:

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF PUBLIC INFORMATION
Washington 25, D. C.

(Date)

AGREEMENT

As a correspondent accredited to and authorized by the Department of Defense to join _____ for the purpose of
(Name of unit)
obtaining new material for public dissemination, I subscribe to the following conditions:

1. As a correspondent, I understand that I am subject to military law in accordance with the provisions of Article 2 (10), (11), and (12) of the Uniform Code of Military Justice, and to all regulations for the Government of the Armed Forces.

2. My movements and actions shall be in accordance with the regulations of the Department of Defense and the instructions of

the commanding officer of the headquarters to which I am attached.

3. I agree to submit for censorship all news material obtained during the period of this accreditation, whether for release while with the armed forces or thereafter as long as security is a consideration.

4. I agree to comply with all currency control regulations in effect in the places visited under this authorization.

5. I guarantee to meet all financial obligations incurred by me while accompanying the armed forces under this authorization.

6. I waive all claims against the United States for loss or damage to my property or for personal injury, sustained in connection with my activities as a war correspondent, during the period covered by this authorization.

7. This authorization is for the period ---------- to ---------- and subject to revocation at any time, for cause, by the Department of Defense.

Signed ----------
Representing ----------
(Company, syndicate, or agency)
Witnessing officer ----------
(Name)

1 copy—Office of Public Information, Department of Defense.
1 copy—Military Department concerned.
1 copy—Commanding officer, headquarters concerned.
1 copy—Correspondent.

§ 271.7 Credentials.

The issuance and use of credentials shall be as outlined below:

(a) When an application for accreditation as a correspondent is approved, the applicant will be furnished credentials, including a correspondent's identification card (SD Form 36), by the Office of Public Information, Department of Defense. Possession of this identification card establishes the physical identity of the correspondent, his connection with a recognized public information agency, and the completion of a file check by appropriate Federal security agencies.

(b) The correspondent shall be furnished an identity card by the Department of Defense (DD Form 489), stating that he is an accredited correspondent serving with the Armed Forces of the United States and entitled to treatment as a prisoner of war in accordance with Article 4, Geneva Convention Relative to Prisoners of War, of August 12, 1949. For the purpose of insuring proper treatment in the event of capture, the identity card will provide the assimilated rank of major or comparable grade.

(c) A correspondent's accreditation card does not authorize the bearer to have access to classified military information.

(d) Correspondents will produce identification cards upon request of an officer, warrant officer, or enlisted man in the execution of his duty.

(e) Where conditions warrant, in addition to Department of Defense credentials, major headquarters commanders may issue passes or credentials with regulations governing their use.

§ 271.8 Termination of accreditation to a theater of operation.

An accredited correspondent may leave a theater of operations at any time upon military orders issued by the commander concerned.

(a) If accompanying the Armed Forces beyond the territorial limits of the United States, and the return journey is made by Government transportation, relief does not become effective until arrival in the United States. If the journey is made by other than Government transportation, relief becomes effective at the time of departure from the theater of operation or base command.

(b) Accreditation as a war correspondent to a theater of operation will be terminated upon:

(1) Severance of employment with the sponsoring agency.

(2) Revocation of accreditation.

(c) Revocation of accreditation is a responsibility solely of the Secretary of Defense. In general, disaccreditation will result from:

(1) Personal misconduct of a criminal or moral nature.

(2) Violation of security regulations.

(3) Membership in, close relationship to, or adherence to subversive organizations.

(d) Upon termination of accreditation, the correspondent will leave the theater of operations or base command upon instructions of the commander concerned. Correspondents whose accreditation has been terminated will surrender their credentials to the theater or base commander before departure for the continental United States, at which time they will be issued temporary credentials covering the return journey. The theater or base commander will forward the expired credentials to the Office of Public Information, Department of Defense.

§ 271.9 Uniform.

(a) Accredited correspondents accompanying the Armed Forces of the United States in a theater of operation will wear the following officer-type service uniforms:

(1) *Winter.* Jacket and/or shirt and trousers, wool, shade 33; or fatigue clothing; necktie, shade 51, trench coat, shade 79; garrison cap, wool, shade 33.

(2) *Summer.* Cotton khaki shirt, trousers and cotton khaki garrison cap, shade 1; or fatigue clothing; necktie, shade 51.

(b) Correspondents accompanying the Armed Forces of the United States will wear civilian insignia conforming to the following specifications: On a khaki-colored cloth background 2½ inches in height and 3 inches in width, a dark blue equilateral triangle of 1¼ inches, bearing the letters U. S. in khaki color ¼ inch in width and ½ inch in height. The word WAR will appear above the blue triangle and the word CORRESPONDENT below it in dark blue letters ¼ inch in height. This insignia will be worn on the left breast pocket of outer garments or in a comparable position on outer garments having no pockets. It will also be worn on the left front of the garrison cap.

(c) Correspondents may wear military decorations awarded to them as civilians accompanying the Armed Forces. They may also wear decorations or service ribbons awarded them for previous active military service.

(d) Correspondents may not wear military insignia or divisional or unit insignia. Civilians accompanying the Armed Forces are not eligible for the award of service medals.

(e) Articles of special clothing and equipment may be issued to correspondents on memorandum receipt where required.

(f) Accredited correspondents will not wear civilian clothing while accompanying the Armed Forces in a theater of operation. Exceptions may be made for special groups under escort visiting military areas for limited periods.

§ 271.10 Transportation.

(a) When commercial facilities are inadequate, Government transportation may be furnished to accredited correspondents, for travel to and from the command to which attached, whenever such transportation is available and essential military personnel are not displaced.

(b) Within the theater, or other command of attachment, correspondents may request Government transportation required for the accomplishment of their missions.

(c) The baggage of correspondents normally will be moved with that of the headquarters to which attached. Its weight and content will be within the limits prescribed by the commander concerned.

§ 271.11 Reporting upon arrival.

Upon arrival at the headquarters to which attached, correspondents will report to the Public Information officer, who will provide the assistance and guidance required for the accomplishment of their missions.

§ 271.12 Change in assignment.

Changes in assignment will be effected as follows:

(a) Correspondents officially assigned to the headquarters of a senior commander may, at their request, be attached to a subordinate headquarters. Such changes of assignment will be subject to the approval of the commanding officers concerned.

(b) A correspondent's movement to a theater other than that to which currently assigned will be accomplished only with the approval of the commanders concerned and the Department of Defense.

§ 271.13 Discipline.

Disciplinary action may be taken as follows for violation of §§ 271.1–271.26 or other regulations:

(a) The privileges accorded an accredited correspondent may be suspended for the use of words or expressions in a news dispatch intended to mislead or deceive a censor and cause approval of otherwise objectionable dispatches.

(b) In extreme cases of offense, the correspondent may be placed in arrest to await evacuation or disciplinary action.

(c) Information of the conduct of a correspondent warranting disciplinary action together with that of any action taken or contemplated, will be forwarded

through appropriate channels to the Office of Public Information, Department of Defense.

§ 271.14 Communication with sponsoring agency.

When the behavior or activities of a correspondent are of such nature, commendable or otherwise, as to warrant calling the facts to the attention of the sponsoring agency, commanders will forward all pertinent information to the military department concerned. Recommendations relative to the case will be sent by the department to the Office of Public Information, Department of Defense, for action.

§ 271.15 Filing of material.

(a) Prior to transmittal, all news material will be submitted for review to the appropriate censorship authority, as directed by the commander of the force to which the correspondent is attached (§ 271.16).

(b) Correspondents will employ only those communications facilities designated by the commander of the force or unit to which attached.

(c) When commercial communications facilities are not available, the use of Armed Forces facilities by correspondents is authorized subject to the following conditions:

(1) Press traffic will not interfere with operational military traffic.

(2) When military necessity requires that priority of transmission of news material be established, procedures (pooling, priorities, word limit restrictions, etc.) will be prescribed by the commander concerned.

(3) Press traffic originating on military facilities will be refiled commercially at the commercial refile point for the area concerned.

(4) Press traffic will be refiled Collect when transferred to a commercial facility.

(5) Press traffic will be prepared and filed in the manner prescribed for the type of communications facility over which it is to be transmitted.

(6) The provisions of section 327, Communication Act of 1934, as amended (48 Stat. 1091; 47 U. S. C. 327) will be applicable to all press traffic and related service messages accepted for transmission via the Naval Communications Service.

§ 271.16 Censorship.

Censorship in time of war or national emergency is a measure vital to the security of the people of the United States and to the military forces thereof. The following regulations will apply:

(a) All communications, by whatever means, will be subject to established censorship regulations. Material intended for publication may not be sent as personal mail but must be submitted for press censorship.

(b) In general, news material may be released for dissemination to the public provided it does not supply information of value to the enemy.

(c) News material prepared by correspondents after their return to the United States from a theater of operation which contains information that might be of value to the enemy, such as tactical doctrine, classified equipment, future plans, combat efficiency or state of training, etc., will be submitted for review to the Office of Public Information, Department of Defense, prior to publication.

§ 271.17 Pictorial coverage.

Accredited news cameramen will be afforded every reasonable opportunity to photograph the activities of the Armed Forces but the Armed Forces are not responsible for the quantity or quality of their output. It is recognized that:

(a) Still and motion pictures are essential in keeping the public informed of the war effort and in the official documentation of the war.

(b) News events must be photographed as they occur.

(c) Control should be exercised over the release of photographs rather than the taking of them. Photographers are expected, however, to refrain from taking pictures that violate security or hamper the Armed Forces or their allies in the discharge of military duties.

§ 271.18 Still picture pools.

Military necessity, such as lack of space, transportation, or other facilities, or diverse and extensive military operations, may require that still picture photographic coverage of the activities of the Armed Forces of the United States be undertaken by recognized still picture photographic agencies in a pool operation. When pooling is required, all pictures taken by any representative of any participating agency will be distributed to all other agencies in the pool.

§ 271.19 Exclusive still pictures.

At the discretion of the Department of Defense and the military department concerned, a special war correspondent photographer may be accredited to a theater of operation to undertake an exclusive assignment. All pictures secured by a temporarily accredited cameraman, other than those specified in advance, whether taken by himself or secured from another source, are subject to pooling if a pool is in operation.

§ 271.20 Release dates.

Except under unusual circumstances, the Department of Defense will not establish release dates for still picture pool photographs. All pool photographs will be released simultaneously on a date established by, and agreeable to, the majority of pool members.

§ 271.21 Still picture censorship, developing, and shipping.

All still pictures made in a theater of operation will be subject to current censorship directives. When laboratory facilities are available, photographs and accompanying captions will be censored prior to shipment or radio transmission from the theater. When laboratory facilities are not available, negatives, clearly marked as such, and captions to accompany them will be shipped through such Armed Forces or other channels as are specified by the theater commander concerned to accomplish transmittal to the United States in the shortest possible time. They will be directed to the Office of Public Information, Department of Defense, Washington 25, D. C. Photographs, after being developed and censored, will be delivered by the Department of Defense to the agency employing the photographer who made the picture. This agency will then make prints or copy negatives available to other pool companies if it is a pool photograph. The original negative is the property of the agency whose photographer made it. Negatives and prints not released by the censor wil be held by the Department of Defense until releasable.

§ 271.22 Copies of stills for Department of Defense.

Three prints of all photographs made by war correspondents in theaters of operations will be turned over free of charge, to the Office of Public Information, Department of Defense, for its archives. The Department of Defense does not have the right to sell, reproduce, or distribute these pictures in any way without permission of the company owning the negative.

§ 271.23 Theater newsreel or television news film pools.

Military necessity such as lack of space, transportation, or other facilities, or diverse and extensive military operations, may require that motion picture coverage of the activities of the Armed Forces of the United States be undertaken by recognized photographic agencies in a pool operation which will require that all film taken by any representative of any participating agency be distributed to all other agencies in the pool. When pooling is necessary, separate pools will be established for theater newsreel and television news film companies.

§ 271.24 Exclusive motion pictures.

At the discretion of the Department of Defense and the military department concerned, a special war correspondent motion picture cameraman may be accredited to a theater of operation to undertake an exclusive assignment. All film secured by a temporarily accredited movie cameraman, other than that specified in advance, whether taken by himself or secured from another source, is subject to pooling if a pool is in operation.

§ 271.25 Motion picture censorship, developing, and shipping.

All motion pictures made in a theater of operation will be subject to current censorship directives. Underdeveloped motion picture negatives, clearly marked as such, will be shipped from the theater of operations through Armed Forces channels by fastest practicable means to the Office of Public Information, Department of Defense, Washington 25, D.C. Films will be developed at a laboratory specified by or acceptable to the Department of Defense. The Office of Public Information, Department of De-

fense, will determine the final release of classified as well as unclassified motion pictures so that there will be no censorship or delay at the source in forwarding the undeveloped negatives or in permitting motion pictures to be taken. After censorship, the negatives will be delivered to the company employing the photographer who made the pictures. This company will then make duplicating prints or negatives available to other pool members when such action is indicated. The original negative is the property of the agency whose photographers made it. Film not released by the censor will be held by the Department of Defense until releasable.

§ 271.26 Duplicating copy for Department of Defense.

A duplicating print or negative will be furnished the Department of Defense by the theater newsreel or television news film company owning the negative. The Department of Defense does not have the right to sell, reproduce, or distribute these films, in any way without permission of the company owning the negative.

SUBCHAPTER N—COMMERCIAL INSURANCE

PART 276—SOLICITATION OF COMMERCIAL LIFE INSURANCE ON MILITARY INSTALLATIONS

Sec.
276.1 Purpose and scope.
276.2 Policy.
276.3 Minimum requirements for companies.
276.4 Supervision of solicitation.
276.5 Use of the allotment system.
276.6 Withdrawal of solicitation privilege.
276.7 Reports.

AUTHORITY: §§ 276.1 to 276.7 issued under sec. 202, 61 Stat. 500, as amended; 5 U.S.C. 171a.

§ 276.1 Purpose and scope.

The purpose of this part is to establish Department of Defense policy with respect to the solicitation of members of the Armed Forces for the purchase of life insurance on U.S. military installations.

§ 276.2 Policy.

(a) *General.* The conduct of a private business, including the sale of life insurance, on a military installation is a privilege the control of which is a responsibility vested in the installation commander subject to such regulations as may be prescribed by the Secretary of the military department concerned.

(b) *Withdrawal of privilege.* The privilege to solicit on military installations may be withdrawn for cause.

(c) *Solicitation on military installations in the United States, a territory or possession.* Commanders of installations over which exclusive jurisdiction has been ceded to the United States will not permit solicitation by the representative of any commercial company, unless both the company and its agents are properly licensed by any one of the states, the territory or the District of Columbia. Where the state has retained exclusive or concurrent jurisdiction over any part of the installation, the company and its agents must qualify under the laws of that particular state to be eligible to solicit on the installation.

(d) *Solicitation on U.S. military installations in foreign areas; companies.* The Department of Defense will grant permission to companies to solicit on military installations in foreign oversea areas under this part. Applications will be submitted to the Department of Defense during the month of April each year. Accreditation will be valid for one year unless sooner withdrawn.

(e) *Solicitation on U.S. military installations in foreign areas; agents.* An agent may solicit business on military installations in foreign areas if:

(1) The company he represents has been granted permission to solicit under this part;

(2) His name appears on the list maintained by the Chairman of the DOD Life Insurance Board; and

(3) He has been granted permission by the commanding officer of the military installation on which he desires to solicit.

(f) *Counseling.* Commanders will provide counseling for the personnel under their command concerning the purchase of life insurance. It should be thoroughly explained that the insurance contract is intended to continue over a period of years, and that, if the insurance policy is allowed to lapse, the individual may not recover more than the cash value at the time the policy lapsed. Commanders should ensure that such transactions are entered into in good faith and only after a full understanding of the agreement by the military member. Counseling is mandatory for personnel of pay grades E–1, E–2, and E–3. It is encouraged for all others.

(g) *Department of Defense Life Insurance Board.* The Department of Defense Life Insurance Board has been established by DoD Instruction 5120.23 (see also § 277.3 of this subchapter) as the principal advisor to the Secretary of Defense in all matters pertaining to the sale of commercial life insurance to members of the Armed Forces. It is a function of this Board to recommend final action on applications received from insurance companies to solicit commercial life insurance on installations in foreign areas. The functions of the Board also include the recommendation of final action against companies for cause, including the withdrawal of soliciting privileges. In this connection the Board receives and reviews reports of violations of regulations.

§ 276.3 Minimum requirements for companies.

(a) *Qualification statements by companies.* Before a company may be authorized to solicit on a military installation, the commanding officer will require

the company to submit a notarized statement by its president or vice president: (1) Listing all policies, together with their form numbers, to be offered on the military installation; (2) assuring that only the policies listed are to be so offered and that such policies comply with paragraph (b) of this section; and (3) indicating the name(s) of the agent(s) authorized to solicit and that the company assumes full responsibility for the actions of the agent(s) named with respect to such solicitation.

(b) *Minimum policy requirements.* The minimum requirements for insurance policies offered on military installations are as follows:

(1) Reserves at least equal to those produced by the Commissioners Reserve Valuation Method as defined in the Standard Valuation Law when calculated according to the Commissioners 1941 Standard Ordinary Mortality Table with interest at a rate not in excess of 3½ percent per annum;

(2) Policies must comply with the Standard Non-Forfeiture and Valuation Law as interpreted by the "Working Committee of the Life Insurance Committee, National Association of Insurance Commissioners" (commonly known as the Hooker Committee). Attention is particularly directed to the need for complying with at least the minimum values provided by the Standard Non-Forfeiture and Valuation Law.

(3) The existence of exclusion or restrictive clauses or provisions, including War Clauses, Geographic Limitations, Aviation Exclusion Provisions, Demolition, etc., must be plainly indicated on the face of the policy.

(4) Statements referring to dividends must indicate that the dividends are estimates and are not guaranteed.

§ 276.4 Supervision of solicitation.

(a) *Command supervision.* (1) The Secretary of each military department will issue regulations to ensure that solicitation on military installations is properly supervised and controlled. These regulations will include a prohibition against:

(i) The soliciation of recruits or trainees and "mass" or "captive" audiences;

(ii) Practices involving rebates or elimination of competition; and

(iii) Military personnel on active duty representing any insurance company.

(2) An official identification card may not be used to gain entrance to a military installation to solicit the sale of life insurance.

(b) *Information to be required of agents.* For each proposed sale to enlisted personnel in the grades of E–1, E–2, and E–3, the agent must provide the applicant and the commander the following information:

(1) Name and address of the company;

(2) Name and address of the agent;

(3) Type of policy;

(4) Amount of life insurance;

(5) Premium;

(6) Full name of person insured;

(7) Death benefit, guaranteed cash value, extended insurance, pure endowment (if any), at the end of the first to the fifth years inclusive and the tenth, fifteenth, and twentieth years; and

(8) List of all exclusion provisions which are incorporated in the policy, such as War Clauses, Geographic Limitations, Aviation Exclusion Provisions, Demolition, etc.

Commanders will use the foregoing information in connection with counseling.

(c) *Limitations.* Solicitation will be on an individual basis, preferably by appointment, in a specific appropriate location(s), and at specified times designated by the installation commander.

(d) *Installation regulations.* Commanders may issue regulations governing solicitation on their installations. When a commander desires to prescribe additional safeguards which require companies to meet more restrictive requirements than contained in regulations of the military departments, such additional requirements or restrictions must first be reviewed and confirmed by the appropriate military department. Additional regulatory controls with regard to individual agents are not required to be so reviewed and confirmed.

(e) *Statement by agent.* Before being permitted to solicit, the agent will be furnished a copy of the applicable insurance regulations and required to indicate in writing that he understands them and that any violation of the regulations may result in the withdrawal of the privilege of solicitation.

§ 276.5 Use of the allotment system.

(a) Allotments of military pay will be made in accordance with DOD Directive 7330.1, "Voluntary Military Pay Allotments."

(b) *Allotment forms may not be issued to agents.* The possession of allotment forms by agents is cause for withdrawal of the privilege of solicitation.

(c) At least seven days must elapse between the signing of an insurance application and the certification of an allotment for personnel in pay grades E–1, E–2, and E–3. Allotment forms will be completed before signature.

(d) When the enlisted member in grade E–1, E–2, or E–3 purchases insurance on a military installation and pays at least the first full monthly premium in cash, the 7-day waiting period will not be made applicable but the prescribed counselling will be accomplished.

§ 276.6 Withdrawal of solicitation privilege.

(a) The Secretary of Defense may withdraw the privilege of solicitation from companies and agents upon receipt of information evidencing the utilization of any manipulative, deceptive, or fraudulent device, scheme, or artifice, including misleading advertising or other misleading sales literature.

(b) The military departments may permit installation commanders to suspend an agent for cause for a reasonable period. When such suspension occurs, the agent, the company he represents, the military department concerned, and the insurance commissioners of the States in which he is licensed will be promptly notified. The department concerned will ensure that complete investigation is made and that a report of such investigation is submitted to that department.

(c) The withdrawal of the soliciting privilege should be resorted to only for good and sufficient reasons. Final action to withdraw from an agent the privilege of soliciting on all installations within the command rests with the military department or, as to installations in foreign areas, with the theater commander. When such action is taken, the agent, the company he represents, the insurance commissioners of the States in which the agent is licensed, the other military departments, and the Assistant Secretary of Defense (Manpower, Personnel and Reserve) will be notified. When the privilege of solicitation is withdrawn by one military department, such withdrawal will be effective in the other military departments.

(d) For serious or repeated violations, a commander may suspend a company temporarily. Where such action is instituted, the military department concerned will be promptly notified. The military department will then forward detailed information to the Office of the Secretary of Defense. Companies may be permanently prohibited from soliciting on military installations only by action of the Secretary of Defense.

§ 276.7 Reports.

The military departments will report to the Assistant Secretary of Defense (Manpower, Personnel and Reserve) the following violations or actions in duplicate immediately after such violations or actions occur. As a minimum the agent's name, the company's name and a description of the violation will be reported.

(a) Violations by agents resulting in suspension of the solicitation privilege on a limited basis. Notifications will be made as indicated in § 276.6(b).

(b) Violations by agents resulting in suspension of the solicitation privilege throughout the military departments. Additional notifications will be made as indicated in § 276.6(c).

(c) Action taken to suspend the privilege of solicitation in the case of any life insurance company.

PART 277—SOLICITATION OF COMMERCIAL LIFE INSURANCE ON MILITARY INSTALLATIONS IN OVERSEA AREAS

Sec.
277.1 General.
277.2 Application.
277.3 Department of Defense Life Insurance Board.
277.4 Minimum requirements for companies.
277.5 Announcement of findings.
277.6 Change in status.

AUTHORITY: §§ 277.1 to 277.6 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 277.1 General.

Pursuant to § 276.3 of this subchapter, companies desiring to sell commercial life insurance to members of the Armed Forces on military installations under United States jurisdiction in oversea areas may, on application, be authorized to do so in accordance with DOD Instruction 1344.1, dated December 15, 1955, subject: "Solicitation of Commercial Life Insurance on Military Installations." (Part 276 of this subchapter.)

§ 277.2 Applications.

(a) Applications will be submitted to the Department of Defense during April of each year. They will not be accepted or considered at any other time. Applications will be in letter form and appropriately documented. They must be signed by the President or Vice President of the company and attested to. Formats A[1] (Selected Financial Information); B[1] (Lapse Ratio and Military Business Statement); and C[1] (Operations Statement) to be used in submitting technical information may be obtained upon request by companies requesting accreditation for the first time. Companies currently accredited will be supplied Formats A, B, and C without making a request. (The information required on the formats has been approved in accordance with the Federal Reports Act by the Bureau of the Budget under approval number 22–R188.) The application must furnish the following information:

(1) Foreign countries and commands (e.g.: Army, Europe; Air Force, Europe; Navy, Far East; Air Force, Northeast; etc.) where it is desired to solicit on military bases or installations.

(2) Plans for control of and supervision to be exercised by the company over its agents.

(3) List of States and jurisdictions in which the company is licensed and dates of such licensing.

(4) Use Format A, cited above, to submit information from each of the last five annual statements to include:

(i) Admitted assets.

(ii) Net reserve.

(iii) Combined paid up capital and surplus, or surplus.

(iv) Insurance in force, reported by classes.

(5) A statement that the company has complied with or will comply with the applicable laws of the country or countries wherein it proposes to solicit (by "laws of the country" is meant all national, provincial, city or country laws or ordinances of any country, as applicable), and upon being authorized to do business in such country or countries, a statement to that effect.

(6) An authenticated copy of the current annual statement, notarized and sworn to by authorized company officials in the space provided at the bottom of page 1 of the annual statement, as filed with the insurance department of the state of domicile.

(7) An authenticated copy of a current convention or "association type" report of examination if the company is licensed by more than one state, otherwise, a current report of one insurance department.

(8) A sworn statement covering the following items:

(i) That the policies to be offered adhere to the standards prescribed by § 276.4 of this subchapter (Paragraph IV B, DOD Instruction 1344.1).

(ii) The amount of unassigned surplus and paid up capital or only surplus if a non-stock company. In computing the amount of unassigned surplus, include as liabilities all debts due or to become due, contingent or otherwise, as provided in the Life Insurance Act of the District of Columbia Act of June 19, 1934; C 672, 48 Stat. 1125, as amended, and a statement that the amount of unassigned surplus and paid up capital has been computed by the method prescribed in the aforesaid act.

(iii) That the policies to be offered for sale (*a*) do not contain other than standard provisions such as those prescribed by the Life Insurance Act of the District of Columbia (cited in subdivision (ii) of this subparagraph), and (*b*) do not provide for a variation in the amount of death benefit depending upon the length of time the policy has been in force.

(iv) That none of its officers, directors, or principal stockholders, or any members of his immediate family, receives or has any contract to receive commissions, directly or indirectly, from military business currently transacted by the company, or if the company cannot so attest, a disclosure and justification for such contracts.

(v) That the company has not made any loan (except policy loans) to any director, officer, or principal stockholder, or any member of his immediate family within the last year, and there is not currently outstanding any loan to such person made prior to that period.

(vi) That the company will be responsible for the acts of its agents actually connected with the sale of insurance to military personnel.

(9) Use Format B, cited above, to report the rate of lapse of policies sold to military personnel (including only life insurance, but excluding group life insurance) for each of the last five years and an explanation of the methods or formulae used in computing the ratio of military business to total business (including only life insurance, but excluding group life insurance) annually for the last five years computed on the basis of the following:

(i) Number of policyholders.

(ii) Insurance in force.

(iii) Premium income.

(10) Name, age, legal residence, citizenship and present address of each agent who will solicit overseas, the state or states in which such agents are licensed; the date of licensing, expiration dates, and the area in which each agent will solicit.

(b) Any explanatory remarks that will assist the Department of Defense in evaluating applications are invited.

(c) Applications and any correspondence relating thereto should be addressed to:

Chairman, Life Insurance Board, Department of Defense, The Pentagon, Washington 25, D.C.

§ 277.3 Department of Defense Life Insurance Board.

(a) The Department of Defense Life Insurance Board is established to act as principal advisor to the Secretary of Defense on all matters pertaining to the sale of commercial life insurance to servicemen.

(b) Duties and functions: In addition it is the duty and function of the Board to:

(1) Recommend final action on applications received from insurance companies to solicit commercial life insurance on overseas bases and installations under U.S. jurisdiction.

(2) Maintain a current list of agents representing life insurance companies authorized to solicit on military installations overseas.

(3) Receive and review reports of violations of regulations governing solicitation on bases and installations.

(4) Recommend final penalty action against companies for cause to include the withdrawal of soliciting privileges.

(5) Perform such other related functions as may be directed.

§ 277.4 Minimum requirements for companies.

(a) The Department of Defense will require, among other things, that the following minimum standards be met by companies authorized to solicit on overseas bases and installations.

(1) The company must have demonstrated continuous successful operation in the life insurance business within the continental limits of the United States or a territory or possession for a period of five years, immediately preceding the date of application (for this purpose, use Format C, cited above) except that a company or a division of an existing company organized to write life insurance and affiliated or connected with a company already writing other lines of insurance may be granted a waiver of the otherwise mandatory five-year requirement, if the company to which it is

[1] Filed as part of original document.

connected has been in business twenty years and has a record of financial stability and sound management.

(2) The company affirms its intentions and ability to comply with the applicable laws of the country or countries wherein it proposes to engage in business.

(3) The company must be licensed to do business by any twelve (or more) of the states, a territory, or the District of Columbia; or must comply with the following:

(i) Be licensed to do business in at least one of the states, territories, or the District of Columbia.

(ii) Meet minimum standards for initial licensing under current laws where domiciled even though presently doing business under statutes previously enacted.

(iii) Have unassigned surplus and paid up capital (or surplus, if a non-stock company) at least equal to the amounts currently required by the state of domicile or the District of Columbia, whichever is larger.

(b) In making its recommendation the Board will also consider the integrity and stability of the company's management as evidenced by the information submitted in § 277.2 and such other relevant information as may be officially brought to its attention.

§ 277.5 Announcement of findings.

(a) Final action upon applications for authorization will be forwarded by registered mail. Approvals shall not be construed or interpreted as Department of Defense indorsement of any company.

(b) In the event the finding is unfavorable, specific reasons for such finding shall be included.

(c) Upon receipt of notification of an unfavorable finding, the company shall have 30 days in which to file an appeal for reconsideration. Such appeals will be accompanied by substantiating evidence.

§ 277.6 Change in status.

(a) It is incumbent on companies to maintain with the Department of Defense a current list of agents, together with areas in which doing business. Changes must be promptly reported. Failure to report such change will result in non-acceptance of the agents credentials by overseas commanders.

(b) Material changes affecting the company's status as certified to in accordance with § 277.2 must be reported promptly. The Department of Defense reserves the right to withdraw authorization for failure to report such changes when such change is material to the original authorization.

SUBCHAPTER O—MILITARY POSTAL SERVICE

PART 280—USE OF THE MILITARY POSTAL SERVICE

Sec.
280.1 Purpose
280.2 Scope
280.3 Background
280.4 Policy
280.5 Implementation

AUTHORITY: §§ 280.1 to 280.5 issued under sec. 201, 61 Stat. 499, as amended; 5 U. S. C. 171 note.

§ 280.1 Purpose.

The purpose of this part is to establish a single policy defining the organizations, agencies and personnel entitled to use the facilities of the Military Postal Service; and to establish procedures to coordinate the uniform implementation of this policy and related postal matters.

§ 280.2 Scope.

The Military Postal Service represents the postal facilities of the Army, the Navy and the Air Force which are maintained and operated for the purpose of providing complete postal services for the U.S. Armed Forces. The Military Postal Service is maintained in areas where the U.S. Civil Postal Service does not operate or in any other place where the military situation requires. It is an extension of the U.S. domestic postal system and operates in conformity with the Postal Manual, U.S. Post Office Department, Title 39, Code of Federal Regulations, and other Post Office Department instructions, as well as military regulations and directives. Mail to, from and between oversea military post offices is subject to the U. S. domestic rate of postage.

§ 280.3 Background.

(a) The establishment, operation and use of the U.S. Military Postal Service in sovereign foreign countries is contingent upon agreement with the host government, since it is customary among nations to preserve a monopoly of postal service, including postage revenue and control of customs. International agreements permitting establishment of military postal facilities usually contemplate limiting the use of such facilities to the Armed Forces and certain civilian agencies and organizations serving with or related to the Armed Forces. In time of hostilities or occupation, however, use of military postal facilities may be extended more liberally to U.S. civilian organizations, since reliable international postal service usually is not available then.

(b) The cost of operating military postal facilities overseas is borne by the Military Departments. Currently, that cost includes the transportation of military mail between the United States and oversea areas, exclusive of territories and possessions, both by air and surface transport, commercial as well as military.

§ 280.4 Policy.

(a) The following personnel and organizations are entitled to use the facilities of the Military Postal Service:

(1) Members and units of the Armed Forces of the United States, including the U. S. Coast Guard, on active duty.

(2) U. S. citizen employees of the Department of Defense including the Military Departments of the United States who are serving at military activities in foreign countries.

(3) Accredited technicians on duty with and accompanying the Armed Forces of the United States.

(4) Representatives of the American Red Cross who are citizens of the United States attached to and accompanying the Armed Forces of the United States.

(5) Dependents of the above personnel.

(6) International military commands and agencies of the North Atlantic Treaty Organization (NATO).

(7) Masters and civilian crews of ships under the operational control of the Military Sea Transportation Service, under conditions prescribed by the Military Departments.

(b) The following are entitled to use the facilities of the Military Postal Service to the extent that the Military Postal facilities of the command permit; or, in the case of an occupied area where the military Commander-in-Chief deems the local civil postal service to be inadequate or insecure:

(1) Members of the Armed Forces of allies or contingents thereof assigned or attached to the U. S. Armed Forces.

(2) U. S. Governmental Departments and independent agencies, U. S. citizen employees thereof, and their dependents when accompanying the principal.

(3) Retired personnel of the Armed Forces of the United States who are U.S.

citizens, and their dependents, when accompanying the principal.

(c) When foreign military units are serving with U. S. Armed Forces, including foreign naval vessels operating in the waters of the United States or U. S. territories or possessions, closed mails may be transmitted through U. S. military channels when requested by the foreign country concerned, in places where adequate international postal facilities are not available.

(d) Requests for authority for persons and organizations not enumerated above to use the Military Postal Service in time of peace may be submitted to the Adjutant General in the case of the Army, the Chief of Naval Operations in the case of the Navy, or the Air Adjutant General in the case of the Air Force. Requests which warrant consideration will include the comments and recommendations of the cognizant military area or theater commander when forwarded to the Department. This comment will include a statement concerning eligibility under any existing agreement between the United States and the host country.

(e) In the event of national emergency, hostilities or occupation, when international postal service is not available, cognizant military commanders may grant to citizens of the United States in affected areas overseas the privilege of using the facilities of the Military Postal Service.

(f) Organizations, agencies and individuals not authorized military postal service under the provisions of this part, but who are currently authorized to use such service, will discontinue the use of the Military Postal Service not later than 60 days subsequent to the date of this part.

(g) The use of the Military Postal Service in a sovereign foreign country shall be in compliance with any existing agreement between the United States and the host country.

§ 280.5 Implementation.

The Military Departments will take action necessary to insure:

(a) That Title 39, Code of Federal Regulations, and local restrictions are enforced to preclude the acceptance of prohibited items of mail by military post offices.

(b) That the provisions of any existing agreement with sovereign governments are enforced.

(c) That all persons and organizations using the Military Postal Service comply with local customs requirements.

(d) That persons or organizations authorized to use the Military Postal Service do not act as intermediaries for persons or organizations not authorized use of the Service.

(e) That postal privileges are withdrawn from retired military personnel and civilians when there is evidence of abuse of the privilege.

(f) That the provisions of § 280.4(d) are uniformly implemented. To this end, the Military Departments will, through mutual coordination and agreement, specifically approve or disapprove all requests made upon the Department of Defense or any of its agencies for authorization to use facilities of the Military Postal Service which are not provided for under this part.

(g) That problems pertaining to these matters which cannot readily be solved by the Military Departments will be referred to the Assistant Secretary of Defense (Manpower and Personnel) for consideration.

(h) That the Military Postal Service is not used by individuals or agencies for commercial or business purposes or to transmit items intended for resale.

SUBCHAPTER P—RECORDS

PART 285—RELEASE AND AUTHENTICATION OF COPIES OF OFFICIAL RECORDS

Sec.
285.1 Purpose and authority.
285.2 Definition.
285.3 Applicability.
285.4 Exemptions and conditions.
285.5 Terms and conditions.
285.6 Responsibilities.
285.7 Authentication.

AUTHORITY: §§ 285.1 to 285.7 issued, under R.S. 161; 5 U.S.C. 22.

§ 285.1 Purpose and authority.

The purpose of this part is to provide the policies and procedures within the Department of Defense, exclusive of the three military departments, governing (a) the release of copies of official records which may be made available to persons properly concerned, and (b) the authentication under the seal of the Department of Defense of copies of official records, as required. These instructions are consistent with section 506 (a) of the Federal Records Act of 1950, the Administrative Procedures Act, 60 Stat. 238, 5 U. S. C. 1002, and section 1733 of Title 28 of the United States Code.

§ 285.2 Definition.

The term "official records", as used in this part, includes all papers, books, maps, photographs, and other documentary material regardless of physical form or characteristics made or received in the Department of Defense, exclusive of the three military departments in pursuance of Federal law or in connection with the transaction of business as evidence of the organization, functions, policies, decisions, procedures or other activities because of the informational value of the data contained therein.

§ 285.3 Applicability.

The provisions of this part apply to requests or orders directed to the Secretary of Defense for the release and/or authentication of copies of official records of the Department of Defense, exclusive of the three military departments for the purposes stated in this section. Requests for the release and/or authentication of official records from the military departments should be addressed to the department concerned.

(a) Official use of other departments, agencies or bureaus of the Federal Government.

(b) Use in courts of record in cases of private litigation.

(c) Use in courts of record in criminal prosecutions in which the United States of America is not a party.

(d) Use of other party or parties submitting the request.

Nothing contained in this section shall be construed to require authentication of Department of Defense directives, orders, or other similar documents required in the day-to-day internal operation and management of the Department of Defense including the three military departments.

§ 285.4 Exemptions and conditions.

(a) *Original copies.* Requests for original copies of official records shall not be honored.

(b) *Confidential material.* Confidential material, as defined in the Administrative Procedure Act, section 3 S, 60 Stat. 238, 5 U. S. C. 1002, and other appropriate statutes, shall not be released.

(c) *Personnel records.* Individual personnel records may be released only in accordance with the provisions of Federal Personnel Regulations.

(d) *Classified security information.* Classified security information shall be released only when permitted under the provisions of Executive Order 10501 and appropriate agency security regulations or when approved by the head of the agency or his designated representative.

§ 285.5 Terms and conditions.

(a) *General.* Requests or orders for the release of and/or authentication of copies of official records must be addressed to the Secretary of Defense and must describe the records in sufficient detail to identify the particular record desired without question.

(b) *Government requests.* (1) Requests from departments, agencies and bureaus of the Federal Government must be made over the signature of the head of the agency.

(2) Requests from committees or subcommittees of Congress must be made over the signature of the chairman of the main committee unless power of issuing subpoenas is conferred on the

chairman of the subcommittee in the resolution establishing the subcommittee.

(3) Requests by individual members of the Congress must be made over the signature of the member making the request.

(c) *Orders from a court of record*—(1) *Criminal cases.* The court order or certificate must recite that the information requested is essential to the issues of the case and to the proper administration of justice. The order or certificate must bear the seal of the court in which the case is to be tried.

(2) *Private litigation.* The court order or certificate must recite that the information requested is essential to the issues of the case and to the proper administration of justice. When personnel records are involved the order or certificate must recite that the person whose records are requested or his attorney has been given notice of the application for such order of the court and an opportunity to be heard thereon. Personnel records when received by the court will be impounded with the Clerk of the Court and will not be opened or subject to inspection prior to the trial except with the consent of the individual whose records are involved, or his attorney. Furthermore, the order or certificate must bear the seal of the court in which the case is to be tried.

(3) *A request of an individual.* A request for official records by an individual must be subscribed and sworn to before a Notary Public or other official authorized by law to administer oaths or affirmations. The request must specifically state the need for the copy or copies of authenticated records, and the purpose or purposes for which the record or records are to be used.

§ 285.6 Responsibilities.

The Administrative Assistant, Office of the Secretary of Defense, is responsible for controlling the release of and releasing, when appropriate, copies of official records pursuant to the provisions of this part. He is also responsible for authenticating copies of official records, when necessary.

§ 285.7 Authentication.

The Administrative Assistant, Office of the Secretary of Defense, is hereby designated as the custodian of the Department of Defense seal. Only the Administrative Assistant, Office of the Secretary of Defense, or his designee acting in his behalf, are authorized to attest to the authenticity of official records under the Department of Defense seal.

PART 288—SCHEDULE OF FEES AND CHARGES FOR COPYING, CERTIFICATION AND SEARCH OF RECORDS

Sec.
288.1 Purpose.
288.2 Authority and applicability.
288.3 Definitions.
288.4 Fees.
288.5 Disposition of collections.
288.6 Changes in existing law.
288.7 Review of schedule of fees.
288.8 Implementation.
Exhibit A—Schedule of Fees.

AUTHORITY: §§ 288.1 to 288.8 issued under sec. 501, 65 Stat. 290; 5 U. S. C. 140. Interpret or apply 70 Stat. 297; 5 U. S. C. 140a.

§ 288.1 Purpose.

(a) To designate the type of services relating to copying, certification and search of records that are rendered to the public by the Department of Defense for which a fee shall be collected.

(b) To establish an amended schedule of fees that shall be collected for specified services.

§ 288.2 Authority and applicability.

Title V of the Independent Offices Appropriation Act of 1952 (5 U. S. C. 140) provides that it is the sense of Congress that fees shall be charged for services rendered the public by Federal Agencies in order that such services may be performed on a self-sustaining basis to the fullest extent possible. This act further provides that the President shall prescribe policies to insure uniform application of fees within the Executive Branch. The general policy and implementing instructions for the Executive Branch are prescribed in Bureau of the Budget Circular No. A-28, dated January 23, 1954, subject: "Fees for Copying, Certification, and Search of Records". The provisions of this part and of Exhibit A set forth below are applicable to all components of the Department of Defense.

§ 288.3 Definitions.

(a) *Public.* As used in this part, the public shall include any person or group of persons, including associations, organizations, partnerships, corporations, businesses, municipalities, counties, state or territorial governments. Public does not include agencies or branches of the Federal Government.

(b) *Armed Forces.* As used in this part the term Armed Forces include the Army, Navy, Air Force and Marine Corps and their civilian components.

(c) *Services.* As used in this part, services shall refer to the furnishing of information or documentation, certification or search of records as listed or described under Exhibit A.

§ 288.4 Fees.

(a) *Services and fees.* The types of services rendered the public by the Department of Defense and its component agencies for which a fee shall be collected, subject to the exemptions indicated in paragraph (b) of this section, are contained in Exhibit A. The specific charges for such services are also indicated in Exhibit A. If fees can be determined in advance, such fees shall be collected in advance prior to rendering the services.

(b) *Exemptions.* No fee shall be imposed for the following types of services when requests are received from the sources specified, provided the furnishing of such services is consistent with established policy, does not interfere with the mission of the furnishing agency, and the cost of the services can be provided with available funds:

(1) Any services requested by members of the Armed Forces when the document or information requested is required by such personnel in their capacity as members of the Armed Forces of the United States.

(2) Any services requested by members of the Armed Forces, who are in a casualty status, or by their next of kin or legal representative; and requests for information from any source relating to a casualty.

(3) The address of record of an active duty member or former member of the Armed Forces when it can be furnished informally through local directory (locator) reference, when requested by a member of the Armed Forces or a relative or legal representative of a member of the Armed Forces or the address of record requested by any source when the address is required for the purpose of paying monies or forwarding property to a member or former member of the Armed Forces.

(4) Any services requested by or on behalf of a member or former member of the Armed Forces pertaining to requests for:

(i) Information required to obtain financial benefits.

(ii) Document showing membership and military record in the Armed Forces if discharge or release was under honorable conditions.

(iii) Information relating to a decoration or award or information required for memorialization purposes.

(iv) Review or change in type of discharge or correction of records.

(v) Personal documents, e. g. birth certificates, wnen such documents were required to be furnished by the individual.

(5) Those services which are furnished free in accordance with statutes or Executive Orders.

(6) Information from or copies of medical and dental records and/or X-ray films of patients or former patients of military medical or dental facilities when such information is required for further medical or dental care and requests for such data are (i) submitted by an accredited medical facility, physician or dentist or (ii) requested by the patient, his next of kin or legal representative.

(7) Any services furnished the general public relating to or in furtherance of the Armed Forces recruiting programs and any services furnished representatives of public information media or the general public in the interest of public understanding of the Armed Forces.

(8) Any services involving confirmation of employment, disciplinary or other records or salaries of active or separated civilian or military personnel when requested by prospective employers or recognized sources of inquiry for credit or financial purposes.

(9) Any services requested by and furnished to a Member of Congress for official use.

(10) Any services requested by a State, territorial, county, or municipal government or an agency thereof which is carrying on a function related to or in furtherance of an objective of the Department of Defense.

(11) Any services requested by a court when the furnishing of such will serve as a substitute for personal court appearance of a military or civilian employee of the Department of Defense.

(12) Any services requested by a nonprofit organization which is carrying on a function related to or in furtherance of an objective of the Federal Government or in the interest of public health and welfare.

(13) Any services requested when the cost of such services ultimately would be charged to the Federal Government.

(14) Any services requested by donors with respect to their gifts.

(15) Any request which results in an unsuccessful search of records other than requests to determine the existence or non-existence of a record.

(16) Requests for services which are occasional and incidental (including any request from a resident of a foreign country), not of a type that is requested often, if it is administratively determined that a fee would be inappropriate in such an occasional case.

(c) *Existing fees.* Services to the public (other than those services indicated in Exhibit A) for which fees are currently being collected in accordance with charges established prior to date of Part 288, published at 19 F.R. 7295 shall be continued in effect provided that such services are not exempted from charge by the provisions of paragraph (b) of this section. The charge for such services shall be in conformity with the cost standards established by Bureau of the Budget Circular No. A–28.

§ 288.5 Disposition of collections.

Funds received from the public in payment of the prescribed fees for services financed by working capital funds shall be credited to the appropriate working capital fund. In all other cases, such funds shall be credited to the appropriate General Fund Miscellaneous Receipt Account. No refunds of fees shall be made by reason of change in regulations, directive or fee schedule, or overpayments of one dollar ($1.00) or less.

§ 288.6 Changes in existing law.

In any case when the collection of a fee for service of the type contained in Exhibit A is prohibited by statute or Executive Order, proposed drafts of such legislation or change in Executive Order as may be necessary to permit the fixing of fees as required by this part shall be submitted by the military department concerned under applicable legislative procedures.

§ 288.7 Review of schedule of fees.

The schedule of fees shall be reviewed whenever significant changes in costs occur and at least once every two years to determine whether a fee should be collected for any additional services rendered the public or whether any of the fees prescribed in the schedule should be changed or discontinued. Appropriate recommendations for change in the schedule of fees shall be submitted to the Assistant Secretary of Defense (Comptroller). The cost standards contained in Bureau of the Budget Circular No. A–28 shall be applied in establishing fees for additional services and for changing existing fees.

§ 288.8 Implementation.

The amended schedule of fees shall be placed into operation as soon as practicable but in no event later than ninety (90) days after February 14, 1956.

EXHIBIT A—SCHEDULE OF FEES

Applicable to authorized services of copying, certifications, and search of records rendered to the public by components of the Department of Defense. Requests involving:

	Fee
1. Training and education, each	$1.00
(Including requests for transcripts, certificates, and verification of attendance, course completion, and graduation from service schools and other facilities.)	
2. Medical and dental records of civilians and dependents of military personnel, each	2.00
(Includes requests for information from or copies of medical records including clinical records, outpatient records, dental records, and loan of X-rays.)	
3. Military membership and record:	
a. Address of record, each	1.00
b. Certificate in lieu, statement or verification of service, or report of separation, each	1.50
c. Copy or extract of order or other record (excluding medical, dental, and X-ray records), each	1.00
4. Photography:	
a. Still pictorial or Documentary Photographic Prints 8 x 10 black and white and not more than three prints may be sold from any individual negative on each order. Larger standard sizes of black and white prints will be furnished, if available, at proportionately higher fees.	
Single-weight glossy finish, each	.55
Double-weight matte finish, each	.60
4 x 5 color transparencies or color negative, each	5.00

EXHIBIT A—SCHEDULE OF FEES—continued

	Fee
4. Photography—Continued	
a. Still pictorial—Continued	
8 x 10 color transparencies or color negative, each	$10.00
(In quantities not to exceed three copies any one view.)	
Color prints will not be furnished for public use.	
b. Aerial Photographic Prints, contact prints, or exact negative sizes, single-weight glossy or double-weight semi-matte.	
Size 7 x 9" or 9 x 9", in quantities:	
1–100, each	.70
101–1000, each	.55
Over 1000, each	.50
Size 9 x 18", in quantities:	
1–100, each	1.40
101–1000, each	1.10
Over 1000, each	1.00
c. Aerial Photographic Indexes and Mosaic Copies in any number, size 20 x 24, each	1.20
d. Reproduction of Cover Overlays:	
Transparent Foil Film Overlays, each	1.50
Transparent Paper Overlays, each	.60
Transparent Paper Plot Maps, per square foot	.10
Photostat Plot Maps (maximum size 17½ x 23), each	.65
e. Motion Picture:	
16 mm or 35 mm black and white unedited footage and/or optical sound track, per foot	.10
Color unedited footage:	
16 mm, per foot	.20
16 mm inter-negative	.25
35 mm, per foot:	
Viewing or release print, each	.25
Separation master positive (3 required)	.75
Color inter-positive, each	.55
Color inter-negative, each	.55
Magnetic Tape (per foot):	
16 mm (Direct Dubb), each	.05
35 mm (Direct Dubb), each	.05
Searching (including overhead):	
Each hour or fraction thereof (per hour)	5.00
All film used in duplication to furnish a requested end product shall be charged for on a per foot basis.	
Minimum charge (including stock search per order)	10.00
5. Construction and engineering information.	
Copies of aerial photographic maps, specifications, permits, charts, blueprints, and other technical engineering documents.	
Searching per hour (includes overhead costs)	2.00

EXHIBIT A—SCHEDULE OF FEES—continued

	Fee
5. Construction and engineering—Con.	
Copies of aerial maps—Continued	
First print	.50
Each additional print of same document	.25
6. Copies of medical articles and illustrations	(1)
7. Claims and litigations	
a. Requests from litigants pertaining to private litigation. (If not covered in 2 above.)	
Searching per hour (includes overhead costs)	2.00
Each photocopy	.20
Certification and validation with seal, each	.50
Certification and validation without seal, each	.25
b. Requests pertaining to cases in which the U.S. is a party and where court rules provide for reproduction of records without cost to the Government.	
Searching per hour (includes overhead costs)	2.00
Each photocopy	.20

EXHIBIT A—SCHEDULE OF FEES—continued

	Fee
b. Requests—Continued	
Certification and validation with seal, each	.50
Certification and validation without seal, each	.25
c. Furnishing information from Investigative Reports, e.g., automobile collision investigations, safety reports.	
Searches, overhead, analysis and preparation of report (per hour)	2.00
8. General:	
Furnishing any additional services not specifically provided for above as determined to be appropriate and in consonance with BOB Circular A–28 by respective agencies.	

MAURICE W. ROCHE,
Administrative Secretary,
Office of the Secretary of Defense.

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[1] Standards contained in BOB Circular A–28 will be utilized in computing costs.